ATTACHMENT G: APPEAL APPLICATION WITH ATTACHMENTS

PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: Public right-of-way on School House Road in Montecito

ASSESSOR PARCEL NUMBER: Adjacent to APN009-080-07-00

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:** NextG Networks of California, Inc. Phone: (408) 954-1580 FAX: (408) 383-5397
Mailing Address: 2216 O'Toole Ave. (Street) San Jose (City) CA (State) 95131 (Zip) Website: www.nextgnetworks.net

2. **Owner:** _____ Phone: _____ FAX: _____
Mailing Address: _____ (Street) _____ (City) _____ (State) _____ (Zip) E-mail: _____

3. **Agent:** _____ Phone: _____ FAX: _____
Mailing Address: _____ (Street) _____ (City) _____ (State) _____ (Zip) E-mail: _____

4. **Attorney:** Patrick S. Ryan Phone: (303) 835-3574 FAX: (303) 265-9737
Mailing Address: 1444 Blake Street (Street) Denver (City) CO (State) 80202 (Zip) E-mail: pryan@nextgnetworks.net

2009 MAY -7 PM 1:59
COUNTY OF SANTA BARBARA
CLERK OF THE BOARD
SUPERVISORS

COUNTY USE ONLY

Case Number: _____ *Companion Case Number:* _____
Supervisorial District: _____ *Submittal Date:* _____
Applicable Zoning Ordinance: _____ *Receipt Number:* _____
Project Planner: _____ *Accepted for Processing* _____
Zoning Designation: _____ *Comp. Plan Designation* _____

COUNTY OF SANTA BARBARA APPEAL TO THE :

__X__ **BOARD OF SUPERVISORS**

_____ **PLANNING COMMISSION:** _____**COUNTY** _____ **MONTECITO**

RE: Project Title NextG Networks of California, Inc. ESB15

Case No. **10APL-00000-00011**/09LUP-00000-00320

Date of Action April 28, 2010

I hereby appeal the _____x_____approval w/conditions ____denial of the:

_____Board of Architectural Review – Which Board? _____

_____Coastal Development Permit decision

____Land Use Permit decision

__x___Planning Commission decision – Which Commission? _Montecito Planning Commission

_____Planning & Development Director decision

_____Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

____X___ 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:

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.

As more fully set forth in the attached appeal letter, NextG appeals the Montecito Planning Commission decision upholding the appeal (10APL-00000-00011) denying Land Use Permit 09LUP-00000-00320. The evidence demonstrates that the proposed facilities are Tier 1 facilities under MLUDC § 35.444.010.C. and satisfy the additional requirements of MLUDC § 35.444.010.D. The Commission's denial is clear error, arbitrary and capricious, contrary to law, and not supported by substantial evidence.

Also see attached appeal letter.

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

a. See attached appeal letter.

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.

NextG Networks of California, Inc. by Patrick S. Ryan
Print name and sign – Firm

Date

Patrick S. Ryan, V.P. of Government Relations and Regulatory Affairs
Print name and sign - Preparer of this form

Date

NextG Networks of California, Inc. by Patrick S. Ryan
Print name and sign - Applicant

Date

Print name and sign - Agent

Date

Print name and sign - Landowner

Date

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NextG Networks
EMPOWERING NEXT GENERATION WIRELESS NETWORKS

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May 7, 2010

COUNTY OF SANTA BARBARA
Chair Janet Wolf
and Members of the Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Appeal of the Denial of NextG's Land Use Permit #ESB15
10APL-00000-00011

Dear Chair Wolf and Supervisors:

Pursuant to Section 35.492.050 of the Montecito Land Use and Development Code ("MLUDC"), and in connection with the Santa Barbara County Appeal Application attached hereto, Appellant NextG Networks of California, Inc. ("NextG") hereby appeals the decision of the Montecito Planning Commission (the "Commission") reversing the approval by the County Planning and Development Department ("P&D") of Land Use Permit No. 09LUP-00000-00320.[1] While many of the issues presented by the appellants and stated by the Commission are ostensibly based on aesthetic and other matters, in fact, there is a very clear record in this case and others in Montecito that the denial is based on unfounded fears of electromagnetic frequencies ("EMF"). The site is near the Montecito Union School, as described in a letter and a resolution from the Montecito Union School, which included a Board resolution from the school, and came on the heels of numerous emails from concerned parents about health. There are also numerous public statements on the record by the Board of Supervisors, as well as in the press, that indicate the Board's predisposal to deny the site based on EMF. Without question, EMF is clearly the driving force behind the Commission's denial will be elaborated upon in Section I, below, in spite of the fact that EMF is not a valid grounds for denial.

[1] NextG notes that the Santa Barbara Board of Supervisors has, in a previous appeal involving seven nodes, recused the Commission from consideration of earlier-filed appeals of NextG installations substantially similar to this present appeal. To the extent that the grounds for recusal of the Commission in the prior action are applicable here, the Commission should have been recused from acting on this appeal.

The application at issue here is for the installation of a "very small" wireless telecommunications antenna and associated equipment, as defined by MLUDC § 35.444.010.C.1, on an existing utility pole in the public right of way. NextG's antenna and equipment is in fact smaller and less intrusive than many other utility and communications attachments to the same and surrounding utility poles – a point acknowledged by the Commission and the citizen opponents of NextG's permit. As demonstrated by the photograph and photosimulation that accompany NextG's initial application (attached hereto), NextG's facilities present an extremely low visual impact, blending into the already existing utility right of way facilities. There are already at least two other utility companies attached to these poles and approximately four fiber splice equipment enclosures on the strands, each of which is larger than NextG's antenna, and for which it is our understanding that no planning approval was required.

The County and Montecito have already determined in the MLUDC that "very small facilities" precisely like NextG's are the least intrusive means of closing gaps in wireless coverage. As discussed below, the County and Montecito have adopted Code provisions that recognize that facilities that are the size of NextG's, installed on utility poles in the public right of way, are most favored options for installing wireless telecommunications facilities because they will have no adverse impact. Having reached that conclusion and created a process to promote the deployment of such facilities, the County cannot now deny NextG's application.

As demonstrated below, the Commission erred in denying NextG's application. NextG's node meets all the requirements set forth in the MLUDC and was properly granted as Tier 1 facility by P&D. In particular, NextG's proposed node is consistent with the community plan, minimally intrusive and blends into and is compatible with its surrounding environment. It is clear that the Commission has denied NextG's application as an attempt to regulate the placement of wireless equipment based on concerns regarding radio frequency emissions.

Accordingly, the Commission's decision must be reversed and the P&D's decision granting 09LUP-00000-00320 must be reinstated.

I. EMF Concerns

While the residents and the Commission have recently sought to justify their opposition on allegedly aesthetic and other concerns, in reality, the core of the issue here is an unfounded fear of EMF. Indeed, this particular location (and the nearby school) has been the subject of considerable attention on that very issue. At the October 20, 2009 Board of Supervisors meeting, more than two hours of testimony was dedicated to an in depth discussion of EMF issues, and numerous Supervisors made public statements on the point. At that particular meeting, several high-profile public participants, including celebrity William Baldwin, addressed the Board and specifically implored the County to

deny the node currently under appeal because of its proximity to the Montecito Union School and concerns over the health implications of EMF exposure. As a result, several supervisors made statements on the record and were quoted in the press thereafter voicing their concerns on the topic, including the Chair, Janet Wolf, who stated the intention to "look at . . . saturation, cumulative impacts, the location of being near residences, schools, etc."[2] Supervisor Doreen Farr told a reporter that "at the heart of it is the fact that we really don't yet accept or trust the FCC standards."[3] Similarly, former Chair Joe Centeno told the press in the context of EMF that "we learn things we used to do, we ought not to be doing anymore because they're harmful for us."[4] Clearly, despite the attempt to pay lip service to aesthetic and other concerns, the core basis for these appeals and subsequent denials of NextG's nodes in Montecito are rooted in these unfounded concerns over EMF emissions, and as Supervisor Farr stated, a fundamental lack of "trust" in the FCC standards (even though NextG's proposal is less than 1% of the standard). A November 2009 letter from the Montecito Union School sent to NextG included a copy of the school's Board Resolution 09/10-4, which openly states that the school and the community have significant concerns about EMF and that NextG's "proposal hits an emotional trigger for all of us involved in the EMF issue." A copy of the letter and the resolution from the Montecito Union School is enclosed. Additionally, we have received copies on emails that involved the entire parents' association for the school, focused on the EMF fears, and clearly driving the community to seek a denial for those reasons.

The matter of EMF and NextG's compliance with FCC standards has been exhaustively addressed by NextG in correspondence with staff, and at the October 20, 2009 hearing (through the testimony of Dr. Jerrold Bushberg), as well as in letters that the undersigned has filed with the County dated October 14, 2009, October 26, 2009, and ~~November~~ 14, 2009. Copies of these letters are enclosed and submitted for the record in this case. These letters outline in considerable detail studies NextG has undertaken showing that the actual EMF measurements of NextG's nodes are less than one half of 1% of the applicable federal limits. Moreover, the letters explain that EMF considerations are completely and exclusively the province of the FCC. In other, similar contexts in California, courts have readily seen through a locality's pretextual justifications for denial and have reversed local decisions where a denial is clearly due, as it is here, to the overwhelming concern over EMF issues.[5] Given the overwhelming evidence that includes press statements, the school's resolution, and other statements on record by the Board of Supervisors, EMF is, quite clearly, the driving force behind the appeals here.

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[2] Television interview with Channel 3 News of October 20, 2009.

[3] Interview published in *Noozhawk*, October 21, 2009.

[4] *Id.*

[5] *See, e.g., AT&T Wireless Services of California LLC v. City ofCarlsbad*, 308 F.Supp.2d 1148, 1163 (S.D. Cal. 2003). ("having reviewed the administrative record the court cannot reasonably conclude that the evidence supporting the denial decision was substantial especially in light of the high degree of attention drawn to the concern over the health effects of RF emissions by the residents, planning commission, and city council.")

II. Additional Background

On March 12, 2010, P&D issued its notice and intent to approve NextG's application ESB15 and grant land use permit 09LUP-00000-00320. By letter to the Commission, a group of eight individuals appealed P&D's approval of this land use permit. By letter dated April 26, 2010, NextG responded to the appeal letter in support of P&D's approvals.

At its meeting on April 28, 2010, the Commission, by a 4-to-1 vote[6], upheld the appeal, overruling P&D's approval of 09LUP-00000-00320. In doing so, although presented with the same evidence, the Commission disregarded the Staff's recommendations and proposed findings.[7] Instead, the Commission summarily asserted that (1) the proposed node is inconsistent with Montecito Community Plan Goal LU-M-2 to preserve the semi-rural character of the community, (2) the proposed node is not located to minimize its visibility from public view, (3) the proposed node is not designed to blend into the surrounding environment to the greatest extent feasible, and (4) that the proposed node does not meet the undergrounding standards. These conclusions are belied by the facts and evidence, and moreover are not reasonable justifiable grounds for denial of 09LUP-00000-00320. They are nonetheless addressed below.

III. The Commission's Decision Is Inconsistent With Law

NextG's Proposed Node Must Be Granted As A Tier 1 Facility

The Commission, just like P&D and this Board, is bound by all applicable federal, state and local laws, including in particular the MLUDC. The Commission's decision to overturn P&D's well-considered and well-founded approval constitutes an abuse of discretion because it is not supported by the evidence and is inconsistent with the clear language and authorization of the MLUDC. Put plainly, the Commission's decision violates the MLUDC. It also violates Section 7901 of the Public Utilities Code and unlawfully seeks to regulate the placement of wireless facilities based on EMF.

The MLUDC sets forth standards and processes by which wireless telecommunications facilities may be permitted within Montecito. The purpose of these standards and processes is to promote the orderly development of commercial telecommunications facilities and ensure compatibility with surrounding land uses. MLUDC § 35.444.010.A. Specifically, MLUDC § 35.444.0010.C establishes what types and sizes of commercial telecommunications facilities are compatible with surrounding land uses, and set forth processing requirements to permit those facilities.

[6] Importantly, Commision Chairman Michael Phillips recognized that federal, State, and local law requires approval of the land use permit, whether the Commission wants this technology or not.

[7] Copies of the Staff Report and Proposed Findings are attached hereto.

The permit at issue here would authorize a single distinct "node" installation on an existing pole in Montecito within Santa Barbara County. The node consists of a singular omnidirectional "whip" (or "stick") antenna that is approximately one inch in diameter (essentially the diameter of a broom stick) and twenty-four inches tall, and associated equipment that is approximately six inches deep, six inches wide, and thirty-three inches long, both of which will be attached to an existing utility pole in the public right of way and painted to blend in with the pole to which it is attached. The node, along with associated fiber optic lines (which are already installed) will enable NextG to provide telecommunications services to licensed wireless telecommunications providers and other large users of telecommunications.[8]

Accordingly, NextG's node at issue here falls under the definitions of "Telecommunications Facility" and "Wireless Telecommunications Facility" set forth in the MLUDC,[9] and thus is subject to the permit requirements and siting and development standards established in the MLUDC.

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[8] Consistent with the County's permitting practice and permitting exemptions, the fiber-optic lines have, for the most part, already been installed through the Community, and are not subject to any appeal.

[9] MLUDC Section 35.500.010 defines "Telecommunications Facility" as:

> A facility that transmits or receives electromagnetic signals for communication purposes including data transfer. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; equipment buildings; parking areas; and other accessory development. It does not include facilities staffed with other than occasional maintenance and installation personnel or broadcast studios.

Likewise, MLUDC Section 35.500.010 defines "Wireless Telecommunications Facility" as:

> A commercial facility that transmits and/or receives radio communication signals through the air for cellular, personal communication services, pagers, and/or similar services. The facility may include: antennas, radio transmitters, equipment shelter or cabinet, air vents, antenna support structure, air conditioning unites, fire suppression systems, and emergency back-up generators including fuel storage.

MLUDC § 35.444.010.C outlines a multi-level, tiered system for considering and permitting commercial telecommunications facilities. As the size and intrusiveness of the proposed facilities increase, so too does the applicable tier, applying progressively more stringent siting restrictions and approval requirements. For example, Tier 1 projects are categorized as "very small facilities" under the code and require only ministerial approval of a Land Use or Coastal Development Permit, while Tier 4 projects require a Major Conditional Use Permit, approval of which requires a more extensive application process and public hearings. MLUDC § 35.44.010, Table 4-10.

Under the MLUDC, commercial telecommunications facilities, like NextG's proposed node, are permitted in all zones as Tier 1 commercial facilities, requiring only a ministerial grant of a Land Use or Coastal Development Permit if they are wireless telecommunications facilities that comply with the following:

> ~~(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.
>
> (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 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.
>
> (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.

MLUDC § 35.444.010.C.1.

There is no dispute by P&D in this case that NextG's node consists of a single omnidirectional antenna and associated equipment that is approximately 1,212 cubic inches – or approximately 500 cubic inches less than one cubic foot. The node includes only one antenna, and is to be mounted on an existing operational public utility pole that based upon P&D's original approval is not being considered for removal. Clearly, P&D correctly determined that NextG's proposed node complies with the Tier 1 standard, and

is a permitted facility requiring only a ministerial grant of a Land Use Permit. The Commission made no findings to the contrary and was presented with no evidence to the contrary by any appellant, thus it abused its discretion and acted contrary to law in denying 09LUP-00000-00320, when all the evidence shows that it is a properly permitted Tier 1 commercial telecommunications facility.

While the Commission's written findings did not specifically address the issue, to the extent that the Commission's decision was premised on the argument, put forward by the initial citizens' appeal, that this single node should be treated not as an individual installation under the Tier 1 process, but should be considered a component of NextG's entire proposed Distributed Antenna System ("DAS") network, which should be considered as a whole under the Tier 4 framework, such a consideration is impossible and inappropriate. The only facility at issue on this appeal and addressed by the Commission is a single node installation. Furthermore, the MLUDC establishes that the Tier 4 permitting standards are applicable to:

> a. Wireless telecommunication facilities ***that may not be permitted in compliance with Subsection C.1 through Subsection C.3 above*** but do comply with the following development standards, may be allowed.
>
> (1) The height of the antenna and associated antenna support structures shall not exceed 75 feet.
>
> (2) The base of a new freestanding antenna support structure shall be set back from a lot with a residential zone designation a distance equal to five times the height of the antenna and antenna support structure, or 300 feet, whichever is greater.
>
> (3) If the facility is proposed to be located on a lot with a residential zone designation as identified in Section 35.404.020 (Zoning Map and Zones), or on a lot with a Recreation (REC) zone designation, or does not comply with Subsection 4.a.(2) above, the Montecito Commission, in order to approve a Conditional Use Permit, shall also find that the area proposed to be served by the telecommunications facility would otherwise not be served by the carrier proposing the facility.
>
> b. Other telecommunication facilities as follows are allowed in nonresidential zones as identified in Section 35.404.020 (Zoning Map and Zones):
>
> (1) Facilities that are subject to regulation by the Federal Communications Commission or the California Public Utilities

(e.g., AM/FM radio stations, television stations). Such facilities may include: equipment shelters, antennas, antenna support structures, and other appurtenant equipment related to communication facilities for the transmission or reception of radio, television, and communication signals.

(2) Other commercial telecommunication facilities that exceed 50 feet in height.

These do not include wireless telecommunication facilities that are subject to the provisions of C.4.a. above, or amateur radio facilities that are subject to the provisions of Section 35.444.020 (Noncommercial Telecommunication Facilities).

MLUDC § 35.444.010.C.4 (emphasis added). The plain language of the Code makes clear that Tier 4 is not the applicable standard for wireless telecommunication facilities that may be permitted under any other processing tier. Because NextG's Node falls squarely within the definition of Tier 1, it cannot be Tier 4.

Upon deeper investigation into the Tier 4 standard, it is clear that the description of facilities to which Tier 4 processing applies does not remotely resemble the proposed nodes in NextG's DAS network, much less this particular single node. Tier 4 clearly contemplates large, freestanding structures like traditional cell towers or monopoles. NextG's small omnidirectional antennas and equipment attached to existing public utility poles in the public rights-of-way are nothing like the larger freestanding support structures Tier 4 encompasses. Based on the language and specifications in the MLUDC for Tier 4 permitting, it is nonsensical to even attempt to apply Tier 4 standards to the proposed node in question.

If the Commission determined that Tier 4 is the appropriate standard for the single node site at issue, that decision is illogical and indefensible based on NextG's equipment specifications, which are undisputed, and the plain language of the MLUDC. Nothing in MLUDC § 35.444.01, contemplates treating a single distinct installation that happens to be connected to other facilities via fiber optic lines under a collective permitting process, nor does the MLUDC grant the Commission the authority to make such a decision. As explained above, the node at issue here clearly meets the Tier 1 standard for approval.

Moreover, when NextG first approached P&D about the permitting process in 2004 and 2005, and then specifically with the current DAS network project in early 2009, the various permitting processes under the MLUDC were discussed. The requirements of the code were considered and P&D determined that under the requirements of the MLUDC each individual node installation would require a permit, but that the network as a whole was governed by Section 7901 of the California Public Utilities Code and Sections 253 and 332 of the Federal Telecommunications Act (47 U.S.C. § 253; 47 U.S.C. § 332). The

Commission's decision ignores local, state, and federal laws governing NextG's network, and this individual application in particular.

IV. NextG's Proposed Node Is Consistent with the Montecito Community Plan

From their deliberations, we understand that the Commission erroneously claims that NextG's proposed node is inconsistent with Montecito Community Plan Goal LU-M-2. Goal LU-M-2 establishes as a goal to "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." As explained fully above, the node at issue is what the MLUDC defines as a "very small" facility that will be located on an operational and occupied public utility pole. NextG's installation of its node will do nothing to alter the already existing character of the road and the utilities in the public rights of way. The Commission's decision improperly denies NextG's application based on objections to the pre-existing facilities in the right of way, not NextG's.

As the challengers and Commission noted, School House Road, the proposed location of the node at issue, already has multiple utility poles housing various utility lines and equipment. Accordingly, NextG's very small facilities would be completely consistent with the existing character and nature of the School House Road. Indeed, as addressed below, the addition of NextG's node would hardly be noticed among the existing right-of-way infrastructure.

Perversely, the Commission attempts to rely on that very point to assert that NextG's proposed node is inconsistent with the Montecito Community Plan. After acknowledging the prevalence of utility poles and infrastructure in the public rights of way on School House Road, the Commission asserts that the addition of NextG's very small facility will "exacerbate the already diminished semi-rural character of the roadway." The Commission is essentially acknowledging that the proposed node is completely consistent with the current character of the roadway, but seeks to deny NextG's permit because it wishes the roadway were *more* rural than it actually is. NextG's node does nothing to diminish the current semi-rural nature of the roadway and thus is consistent with Montecito Community Plan Goal LU-M-2.

Moreover, to the extent the Commission's determination that NextG's node may be denied based on a theory that it is the proverbial straw that broke the camels back would violate Public Utilities Code Section 7901 and 7901.1. Under Section 7901 of the California Public Utilities Code, NextG has a statewide franchise to construct its equipment "to facilitate communication by telephone," in the public rights of way. NextG has an absolute right to deploy its facilities in the public rights of way that cannot be denied. Additionally, under Section 7901.1 of the Public Utilities Code, local regulations governing right of way deployment must treat all entities equally. Thus, neither the Commission, nor

the Board, can deny NextG the right to install its equipment on an existing utility pole where all other telephone and utility companies have already been allowed to do so.

V. NextG's Proposed Node Is Located To Minimize Its Visibility From Public View

As P&D found in initially approving the permit at issue, NextG's proposed facility is located to minimize its visibility from public view as required by MLUDC § 35.444.010.G.2. Specifically, the singular whip antenna that is approximately 24 inches long and its associated facilities which are similarly small in stature are designed to blend in with their surrounding environment and be minimally visible. Indeed, the node is to be mounted on an existing, occupied public utility pole that is a part of the existing landscape amongst surrounding trees and developments, including other existing on pole utility boxes, cables, and transformers. Additionally, the facility will be painted brown to blend in with the pole to which it is attached and, because it is narrower than the pole itself, will not extend past the profile of the pole. All of these precautions ensure that the facility will be minimally visually intrusive and in compliance with MLUDC § 35.444.010.G.2.

Despite these facts, the Commission apparently found that because NextG's node would be placed on a utility pole that is visible to the public – at all – the node would also be visible and thus did not meet the requirement that it be located to minimize its visibility from public view.

The requirement that a telecommunication facility be located to minimize its visibility from public view does not demand that the facility be invisible from public view. Indeed, as discussed below, the MLUDC requires that NextG's proposed installation be co-located on an existing structure, such as a public utility pole. Utility poles, including the one at issue here, are typically located in the public rights of way, and by their very nature, are visible from the public view. Accordingly, it cannot be, as the Commission's denial would have it, that telecommunications facilities that are at all visible cannot comply with MLUDC § 35.444.010.G.2. Such a reading would amount to an absolute prohibition on the installation of telecommunications facilities in Montecito, and thus would violate Sections 253 and 332(c)(7) of the federal Communications Act. It also would violate Section 7901 of the Public Utilities Code. NextG's proposed node is a very small facility that is designed and painted to blend into the utility infrastructure to which it is attached, thus minimizing its visibility from the public view.

VI. NextG's Proposed Node Is Compatible With And Blends In With The Surrounding Environment

As discussed above, evidenced by the attached photograph, and admitted by opponents of NextG's proposed node at the April 28, 2010 hearing before the Commission, the node at issue here will be attached to a pole that already has utility infrastructure and equipment attached to it. Likewise, numerous other utility poles in the area have

overhead equipment and lines attached to them. The surrounding environment NextG seeks to attach its node to is in fact the existing above ground right of way infrastructure, and as stressed above, NextG's very small facility will be painted to blend in with the utility pole and will be but another attachment among many in the surrounding public rights of way. There is no evidence, and there could be no evidence, that NextG's very small antenna and associated equipment will not be compatible with the existing right of way infrastructure.

P&D's consideration of those very facts is enough to support their finding that the facility at issue here is compatible with the existing and surrounding development. The Commission erred in ignoring P&D's decision on this point. Moreover, to the extent the Commission's denial is based on the type of facility NextG is installing, its decision is preempted by State and federal law. As explained above, NextG has a statewide franchise to contruct its equipment "to facilitate communication by telephone," in the public rights of way under Section 7901, and thus they are a compatible use in the public rights of way. Neither the Commission, nor this Board, have the option of finding that "no project" is an appropriate "alternative," as argued by the challengers. NextG has an absolute right to deploy its facilities in the public rights of way that cannot be denied out-of-hand, as is currently happening not just in this case, but elsewhere in Montecito. Likewise, under Section 7901.1, local regulations governing right of way deployment must treat all entities equally. Thus, neither the Commission, nor the Board, can deny NextG the right to install its equipment on an existing utility pole where all other telephone and utility companies have already been allowed to do so.

VII. There Is No Applicable Undergrounding Standard That Supports Denial Of NextG's Proposed Node

In a note handed to Ms. Sharon James after the Commission's hearing—purporting to provide one of the bases relied upon in denying NextG's permit—the Commission indicated that NextG's proposed node does not meet the undergrounding standard. This position is essentially adopted in the Commission's finding 2.2.4. Yet, there are no undergrounding standards in Montecito at the site in question. Further, there are no undergrounding standards applicable to NextG's proposed node found anywhere in federal, State, or local law. Accordingly 09LUP-00000-00320 must be granted and the Commission's decision reversed.

The Commission's finding references "Development Standard 2d," which appears to be a reference to MLUDC § 35.444.010.D.2.d, as grounds for denying NextG's application. However, NextG's proposed node is exempt from the requirements of MLUDC § 35.444.010.D.2.d. NextG's proposed facility does not include any "support facilities" identified by that section. That provision refers to large intrusive and cumbersome support facilities such as vaults, equipment rooms, utilities, equipment enclosures. *See* MLUDC § 35.444.010.D.2.d. NextG's node consists of an antenna and its

associated equipment which, under Tier 1, is classified as a "very small facility" with a total volume of approximately 1,212 cubic inches – or approximately 500 cubic inches less than the one cubic foot of antenna and associated equipment allowed under Tier 1. *See* MLUDC § 35.444.010.C.1.a.1. Furthermore, not undergrounding NextG's proposed facilities eliminates the potential for harmful ground disturbing activities since NextG's facility may be attached to and blend in with an operational utility pole. Moreover even if MLUDC § 35.444.010.D.2.d was somehow applicable to NextG's proposed node, it is obviously not technically feasible to underground NextG's antenna and still provide service. Therefore, any such requirement would effectively prohibit NextG's deployment of its telecommunications facilities in violation of Sections 253 and 332 of the Telecommunications Act of 1996. 47 U.S.C. §§ 253 & 332(c)(7).

Likewise, evidence was presented to the Commission on the undergrounding standard adopted by the Montecito Association in its "Overhead Utility Policy." However, the ~~Montecito Association's "Overhead~~ Utility Policy" is not grounds for denial of a land use permit and cannot be the basis for a decision by P&D, the Commission, or this Board. In addition to the fact that federal and state laws prohibit the County, or Montecito, from discriminating against NextG by prohibiting it from attaching to existing utility poles where other telephone corporations are allowed to attach, a wholesale undergrounding requirement is not in any of the applicable local Codes or ordinances. The policy adopted by the Montecito Association does not, and cannot, have any binding effect on P&D, the Commission, or the Board, each of whom is bound by federal, State, and local law, not by the goals of a community association. Thus, the Commission cannot overturn P&D's approval based on a desired goal of undergrounding all utilities.

Indeed, the establishment of an underground ~~district~~ is a formal process that is far beyond a community association's desires – even if a written desire by the Association – and requires that funds be allocated pursuant to the process set forth by the California Public Utilities Commission ("CPUC") in Case No. 8209 (Sep. 19, 1967). Essentially, under the applicable CPUC tariffs and rules that apply, Southern California Edison (under Rule 20) and AT&T (under Rule 32) must be participants. Additionally, an official ~~Underground Utility District ("UUD") must be formed, and a UUD can *only* be formed~~ after consultation with the affected utilities and after a public hearing to establish the project. Santa Barbara County Code of Ordinances ("SBCCO") at Section 34-2. In Santa Barbara, this Board has established an Underground Utilities Committee, consisting of more than 24 members, which considers these issues. The pole in question is not subject to any approved UUD nor is it formally scheduled for any public hearing for consideration as such.

Ultimately, as applied, the Commission's denial on this ground violates Sections 7901 and 7901.1 of the California Public Utilities Code. There is undisputed evidence that other telephone corporations are, and have been, permitted to install facilities overhead on public utility poles in the public rights-of-way at the same location. Denying NextG an

equal opportunity to do the same is a blatant violation of Section 7901.1 of the California Public Utilities Code. Section 7901.1 requires that regulations governing right-of-way deployment by telephone corporations must treat all entities equally. The Commission acknowledged, and indeed relied upon, the existence of significant telecommunications and other utility infrastructure already present overhead on the pole in question, and surrounding poles. The County cannot now demand that NextG underground its facilities. Such a requirement is not "equivalent" treatment of all entities and violates Section 7901.1.

Notably, all of these points were made in our letter filed on April 26, 2010, and no one that opposed the appeal, or the Commission, addressed these points, and in particular, any legal basis for claiming that the utility poles in the area should somehow be treated as a de facto underground district absent any formal action. A copy of NextG's letter dated April 26, 2010 is attached hereto.

VIII. NextG's Proposed Node Meets All Other Applicable MLUDC Requirements For Commercial Telecommunications Facilities

Ultimately, the Commission found that NextG's application satisfied all other applicable requirements of the MLUDC. Nonetheless, because additional points were challenged by the initial citizens' appeal, NextG will address them briefly below.

As explained above, NextG's node facilities comply with and should be considered under the Tier 1 standard. Moreover, as the P&D staff correctly found in originally approving the permit, NextG's facilities also meet all the other development standards applicable to "Commercial Telecommunications Facilities" as outlined in MLUDC § 35.444.010.D.

NextG's proposed node need not comply with any setback requirements because it is to be located on an existing, operating public utility pole. MLUDC § 35.444.011.D.1.a. Also by virtue of its being attached to existing utility pole, NextG's proposed node will comply with all zoning height requirements and will be installed at a height above the reach of the general public, and thus in compliance with MLUDC § 35.444.010.D.1.b, c, & d. There is no basis to require more of a setback for the facility in question than the current setback that exists throughout Montecito for all utility poles and thus MLUDC § 35.444.011.D.1.a explicitly exempts antennas on utility poles from setback requirements.

Similarly, because NextG's proposed node will be attached to an existing utility pole, no new structures will be constructed that would require any ground disturbing activity. Therefore, the node will not disturb existing vegetation, environmentally sensitive areas, or prime agricultural soils, in compliance with MLUDC § 35.444.010.D.1.1 & D.2.b, e, & f.

The node at issue is not located in or on a designated historical landmark, and thus is in compliance with MLUDC § 35.444.010.D.1.e. NextG submitted a radiofrequency emissions report with its application. The report, by Jerrold Bushberg, Ph.D. dated April 29, 2009 establishes that the proposed facilities would meet the FCC's emissions requirements, as required by MLUDC § 35.444.010.D.1.f. The proposed facility is to be located in the public right-of-way, thus, in compliance with MLUDC § 35.444.010.D.1.g, there are already roads available to access the facility, and any temporary parking necessary will be provided by existing public parking in the surrounding area. NextG's proposed node does not include any lights or lighting, therefore it complies with MLUDC § 35.444.010.D.1.h. The proposed facility is not located within an airport safety zone. MLUDC § 35.444.010.D.1.i. NextG's node is proposed to be painted with non-reflective brown paint to match the pole to which it will attach. *See* MLUDC § 35.444.010.D.1.j & k. NextG's node will derive its electric power from Southern California Edison on the utility poles to which it is attached. NextG does not propose any new utility conduits or back-up generators to supply power to its facility in compliance with MLUDC § 35.444.010.D.2.a.

IX. NextG Is Not Required To Establish That A Gap In Service Exists Or Eliminate Potential Alternative Sites

NextG has no explicit statement from the Commission, but to the extent the Commission overturned P&D's decision to approve 09LUP-00000-00320 based on the argument that NextG has not established that there is a gap in service that needs to be filled or gone through an analysis of potential alternatives, the Board must reverse the Commission's decision and reinstate P&D's approval. There is no requirement in the MLUDC or any other County Code requiring that NextG establish such a gap or demonstrate the lack of alternatives. Accordingly, it cannot be grounds for denial of NextG's permit.

Indeed, the County and the Commission are prohibited from denying NextG access to the public rights of way based on alleged potential alternative locations, and NextG is not required to demonstrate a gap in service that creates a need for the deployment. Public Utilities Code § 7901 grants NextG a state-wide franchise to occupy the public rights of way that cannot be denied. In particular, it cannot be denied based on the assertion that there may be alternative locations for NextG to use, and NextG is not required to establish any "gap in service" that requires its deployment. Pursuant to California law, NextG is a "telephone corporation" that constructs "telephone lines." Section 7901 of the California Public Utilities Code grants "telephone corporations" an absolute right to deploy their "telephone lines" in the public rights of way throughout the state. The Public Utilities Code defines "telephone lines" to include "all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wire." Cal. Pub. Util. Code § 233. Accordingly, the

California Legislature has decided that installation of telephone lines, such as NextG's equipment, on utility poles in the public rights of way is compatible with the use and location of public utility poles generally.

Moreover, even if alternative options were within the province of the Commission or the Board to consider, the evidence shows that NextG considered such alternatives before deciding on the node location at issue here. The alternative options are part of the published online record, and they were discussed by NextG representatives at the hearing. In fact, the location at issue here is the result of such alternative analysis performed by NextG. NextG initially proposed a site on San Ysidro Lane that was more attractive to NextG from an engineering perspective, but was also closer to the nearby school. Although that site complied with all the relevant requirements of the MLUDC, in response to community feedback, NextG undertook an extensive search for alternative sites finding only one feasible alternative – the current proposed location. Despite NextG's efforts to accommodate community concern, it ~~is clear~~ that ~~the~~ Commission simply does not want any nodes in or near Montecito, period, creating a standard that can never be met.

X. NextG's Proposed Node Meets All Relevant CEQA Requirements

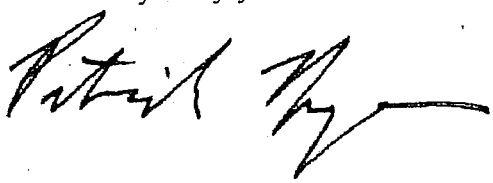
Finally, NextG has satisfied all relevant requirements under the California Environmental Quality Act ("CEQA"). The California Public Utilities Commission ("CPUC") is the only entity with broad discretionary decision-making authority over NextG's proposed services, facilities and construction throughout the state, and as such, is the lead agency. Cal. Code Regs. tit. 14, § 1505(b). As lead agency, the CPUC's CEQA determinations are "final and conclusive," except under certain exceptional circumstances, and binding on all parties. *Id*, §§ 15050, 15162. The CPUC ~~published~~ a Notice of Exemption through the CEQA clearinghouse, and no party has challenged it. A copy of the Notice to Proceed that was issued by the CPUC on July 14, 2009, as well as the Notice of Exemption that was published by the CPUC, is attached.

XI. Conclusion

Clearly, as stated at the outset of this Appeal, the Commission is basing its decision on an irrational fear of EMF, as promoted in the Montecito Union School's resolution, and in numerous public statements that led up to the decision. Even if the Commission's findings were taken on face value, they are not supported by substantial evidence in the record. Indeed, the only evidence presented supports P&D's initial approval of 09LUP-00000-00320 for NextG's proposed node as a Tier 1 very small commercial telecommunications facility. General discontent regarding existing utility infrastructure in the public rights of way is not grounds for denying NextG's application. The MLUDC, Section 7901 ~~of~~ the California Public Utilities Code, and Sections 253 and 332 of the federal

Communications Act all require that NextG's permit be granted. Accordingly, the Board should overturn the Commission's decision, find that under the MLUDC this permit application qualifies as Tier 1 installation, and reinstate P&D's approval of 09LUP-00000-00320.

Very truly yours,



Patrick S. Ryan
Vice President of Government Relations
& Regulatory Affairs

Enclosures

1. Original Application Package
2. Application Form for Appeal
3. Appeal fee
4. CPUC Notice to Proceed
5. CPUC Notice of Exemption
6. Published Findings
7. Photographs and Photosimulations of Proposed Installation
8. NextG's April 26, 2010 Letter to the Montecito Planning Commission
9. Staff Report
10. Proposed Findings
11. Letters Regarding EMF dated October 14, 2009, October 26, 2009 and November 14, 2009.
12. Resolution from the Montecito Union School in November 2009

cc: Michael Ghizzoni, Esq. (County of Santa Barbara) (w/o Enclosures)

NextG Networks of California, Inc. 5720 Thornwood Drive, Goleta, California, 93117 Telephone (805) 683-4326

NextG Networks

EMPOWERING NEXT GENERATION
WIRELESS NETWORKS

January 12, 2010

County of Santa Barbara
Attention: Megan Lowery, Planner
123 East Anapamu Street
Santa Barbara, CA 93101-2058

Subject: NextG Networks of California, Inc. - Site Substitution Permit No. 09CDP-00000-00320/ESB15

Dear Ms. Lowery:

At your request, NextG Networks, Inc. has completed an alternative analysis on our site number ESB15 on San Ysidro Road. We identified an alternative site that you have agreed is a better candidate for approval (see attached alternative analysis).

The drawings, project description, and photo simulation of the proposed alternative site location is also attached.

Please accept this alternative as the site we would like to pursue and withdraw the previously submitted site referenced above.

Please feel free to contact me via email or phone if you require any additional information.

Sincerely,

Sharon James
Director - Director Gov't Affairs
(408) 426-6629 (C)
sjames@nextgnetworks.net

NextG Networks of California, Inc. 5720 Thornwood Drive, Goleta, California, 93117 Telephone (805) 683-4326

NextG Networks

EMPOWERING NEXT GENERATION WIRELESS NETWORKS

August 5, 2009

County of Santa Barbara Planning and Development
Attention: Megan Lowery, Planner
123 East Anapamu St.
Santa Barbara, CA 93101-2058

Subject: NextG Networks of California, Inc. Project Applications Transmittal

Dear Ms. Lowery,

NextG Networks of California, Inc. ("NextG") is a state-regulated public utility providing regulated telecommunication services on infrastructure located in public rights-of-ways. NextG is also a member of the Southern California Joint Pole Committee ("SCJPC") and as such is a part owner in the wood utility poles proposed in our design. A copy of the Resolution from the SCJPC confirming our membership is included. Consistent with our prior meetings, NextG hereby requests authorization to install, operate, and maintain fiber-optic cable and associated equipment, including optical repeaters and antennas, on, over, and under the public right-of-way pursuant to its statewide franchise under P.U. Code §7901.

NextG's regulatory status has been described in the following Certificates of Public Convenience and Necessity ("CPCN") issued by the California Public Utility Commission ("CPUC"): (i) D. 03-01-061, dated Jan. 30, 2003 (granting initial authority as a telephone corporation with limited facilities-based authority to attach to existing infrastructure); (ii) D. 06-01-006, Jan 12, 2006 (an adjudicatory, clarifying decision that clarifies that its rights to attach to infrastructure includes the attachment of antennas); and (iii) D. 07-04-045, Apr. 12, 2007 (granting NextG full facilities-based authority and appointing the CPUC as lead agency for CEQA purposes). All of these decisions have been previously provided and discussed.

NextG's proposed network design in the County of Santa Barbara has been divided into four geographical sections with numbering based on priority schedules. A map reflecting these four sections and their respective priority level is attached to this letter.

Included in our application package are:

- Node drawings providing equipment and installation information for the specific utility pole locations utilized for optical repeaters and antenna

- Photosimulation of each node location
- Check payable to County of Santa Barbara for each node location
- Agreement to Pay form
- Joint pole agreement form for utility pole location

The node locations submitted are identified as follows:

ESB02 - 214 Middle Rd, SB 93108
ESB03 - 619 Park Ln, SB 93108
ESB06 - 119 Olive Mill Rd. SB 93108
ESB07 - 189 Hermosillo Dr. SB 93108
ESB08 - 293 Olive Mill Rd, SB 93108
ESB09 - 104 San Ysidro Rd, SB 93108
ESB10 - 1387 E Valley Rd (across), SB 93108
ESB11 - 284 Santa Rosa Ln, SB 93108
ESB13 - 1980 N Jameson Ln, SB, 93108
ESB14 - 453 Sheffield Dr. SB 93108
ESB15 - 402 San Ysidro Rd. SB 93108 (NE corner)
ESB16 - 2402 Shelby, Summerland 93067
ESB17 - 2103 Ortega Hill Rd. Summerland 93067
ESB18 - 1710 San Leandro Ln, SB 93108
ESB19 - 2894 Via Real, Carpinteria 93013
ESB20 - 3397 Via Real, Carpinteria 93013
GOL07 - 4737 Hollister Dr
GOL08 - Cathedral Oaks Dr
GOL09 - Modoc Rd at Via Senda, SB 93110
GOL10 - across from 533 Patterson
GOL11 - 5234 Holliester
GOL15 - 4282 Cathedral Oaks
GOL17 - 171 Old Mill Rd.
GOL21 - 4970 Cathedral Oaks
GOL22 - 5012 Calle Real
GOL23 - 649 Evonshire
GOL24 - 4491 Vieja Dr.
GOL26 - 505 Walnut Ln, SB 93111
GOL27 - 432 Los Verds Dr. SB 93111
GOL32 - 5059 Hollister Ave, Goleta 93117
GOL35 - Honor Farm Rd.
GOL36 - 501 Puente Dr.
GOL38 - 4608 Cathedral Oaks Rd, SB 93110
GOL41 - Across 390 Mereda Dr. SB 93111
GOL42 - 719 Camino Cascade
GOL47 - 879 Embarcadero Del Norte,Goleta
GOL48 - 6636 Pasado Rd, Goleta,93117
GOL49 - next to 785 Camino Del Sur
GOL50 - 6875 El Colegio Rd, Goleta 93117
GOL51 - 6508 El Colegio Rd, Goleta 93117
SBR04 - 653 Mission Cnyn

These locations have been selected based on their network efficiency allowing the least number of equipment installations as well as structural integrity and constructability. The proposed equipment has been selected to minimize visual impact.

While NextG has currently conceded to the County's zoning process for its installations on utility poles, we observe that the County does not require other similarly regulated utilities that make their attachments to SCJPC infrastructure to undergo zoning (*e.g.*, the transfer, junction, splicing and other equipment boxes installed by Verizon; or the transformers switches or other ancillary equipment installed by SCE). P.U. Code §7901.1(b) requires that all entities be treated

"in an equivalent manner," and the zoning process for NextG – but not other similar utilities – appears to be discriminatory inasmuch as the other utilities attach through non-discretionary permitting processes.

So, while NextG is currently willing to undergo the zoning process that the County has highlighted, we wish to formally inform you that it is urgent that the company has entered into binding agreements to deliver its services to its customer no later than January 2010. In order to achieve this objective, NextG must ***be under construction no later than the first week of October, 2009***, and must test and integrate its sites no later than December 2009. This schedule would not be aggressive for fiber-based providers, or for video providers (all of which install equipment in the right-of-way), however, it does present a unique concern here since the County's code requires that NextG's installation of an antenna be treated differently, something that is not contemplated in P.U. Code 7901.1(b).

Accordingly, we understand that the County will work with NextG expeditiously to process these applications and to afford them the expediency that would otherwise be granted to the County franchise holders for video services or for the ILEC, Verizon. Importantly, if you believe that there is any risk in providing permits in time for construction to begin in early October, I respectfully request that you advise me, in writing, at the earliest possible opportunity. Please feel free to contact me via email or phone if you require any additional information or clarification.

Sincerely,

Sharon James
Director - Program Control
(408) 426-6629 (C)
sjames@nextgnetworks.net

PLANNING & DEVELOPMENT
PERMIT APPLICATION

SITE ADDRESS: 402 San Ysidro Rd.

PARCEL NUMBER: In the public right of way, adjacent to 007-220-001

(acres/sq.ft.): Gross N/A Net N/A

COMPREHENSIVE/COASTAL PLAN DESIGNATION: REC/OPEN SPACE ZONING: REC

CARRIER SITE ID#: ESB15 COORDINATES: (long.) -119.6319 (lat) 34.43298

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

Did you have a pre-application? ☐no ☒yes if yes, who was the planner? Peter Imhof

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

1. **Financially Responsible Person** (For this project) Robert Delsman Phone: (510) 845-9681 FAX: 408-383-5397
Mailing Address: 2216 O'Toole Ave San Jose, CA 95131
Street City State Zip

2. **Owner:** NextG Networks of California, Inc. Phone: (805) 683-4326 FAX:
Mailing Address: 5720 Thornwood Drive, Goleta, CA 93117 E-mail: hpayne@nextgnetworks.net
Street City State Zip

3. **Agent:** Sharon James, NextG Networks of California, Inc Phone: (408)426-6629 FAX:
Mailing Address: 5720 Thornwood Drive, Goleta, CA 93117 E-mail: sjames@nextgnetworks.net
Street City State Zip

4. **Arch./Designer:** Phone: FAX:
Mailing Address: State/Reg Lic#
Street City State Zip

5. **Engineer/Surveyor:** Phone: FAX:
Mailing Address: State/Reg Lic#
Street City State Zip

6. **Contractor:** Bill Harkness, HP Communications, Inc. Phone: (770) 316-5309 FAX:
Mailing Address: 5720 Thornwood Drive, Goleta, CA 93117 State/Reg Lic#
Street City State Zip

7. **Radiofreq. Engineer:** Saeed Garshasbi, NextG Networks of California, Inc. Phone: (949) 812-8901 FAX:
Mailing Address 5720 Thornwood Drive, Goleta, CA 93117 State/Reg Lic#
Street City State Zip

PARCEL INFORMATION: (Check each that apply. Fill in all blanks or indicate "N/A")

1. **Existing Use**: ☐Agric ☐Residential ☐Retail ☐Office ☐Indus ☐ Vacant ☒Other (Public ROW)

2. **Existing**: # of Buildings N/A Gross Sq. Ft:: N/A # Res. Units: N/A Age of Oldest Struct.: N/A

3. **Proposed**: Project: Gross Sq. Ft.: N/A # Res. Units

4. **Grading (cu. yd.)**: Cut N/A Fill N/A Import N/A Export N/A Total:

Total area disturbed by grading (sq. ft. or acres):

COUNTY USE ONLY

Case Number: *Companion Case Number:*
Supervisorial District: *Submittal Date:*
Applicable Zoning Ordinance: *Receipt Number:*
Project Planner: *Accepted for Processing*
Zoning Designation: *Comp. Plan Designation*

Updated by ST 042709

II. PROJECT DESCRIPTION: Please provide a complete description of your project using the description outline below or by typing your own on a separate sheet and attaching it to the front of your application.

The project is a request by the agent, Sharon James, for the applicant, NextG Networks of California, Inc.), for a Land Use Permit/Coastal Development Permit to allow construction and use of an unmanned, telecommunications facility under provisions of County code zoning requirements for property zoned (DR-2.). The facility would be located adjacent to 2103 Ortega Hill Rd. 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 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 Ortega Hill Rd. and Ortega Ridge Rd. with a range of approximately 1500 – 2000 feet in each direction.

All equipment for the antenna(s) 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. In the event of a power failure, a generator would be brought from off-site and temporarily installed to maintain power to the facility.

III. **ALTERNATIVE SITE ANALYSIS:** Please use the space below (or type on a separate sheet and attach it to your application) to provide a complete description of why your project location is the best feasible site for your project objective. Be sure to include all other alternative locations looked at for the facility siting and why they were not feasible options (i.e. unwilling landowner, greater aesthetic impact, could not serve the coverage objective, etc.) If existing facilities are in the near vicinity please describe why collocation is not feasible.

NextG Networks of California, Inc. is a state regulated public utility providing regulated telecommunication services with infrastructure located in public ways. NextG Networks of California, Inc. is also a member of the Southern California Joint Pole Committee and as such is a part owner in the wood utility poles proposed in our design. A copy of the Resolution from the SCJPC confirming our membership is included.

These wood utility pole locations have been selected based on their network efficiency allowing the least number of equipment installations as well as structural integrity and constructability. The proposed equipment has been selected to minimize visual impact.

For all questions below, attach additional sheets if necessary, referencing the section and question number. Please fill in every blank. Use "N/A" where question is not applicable.

IV. COLLOCATION:

A. Is the proposed facility collocatable? [Y] N* *If No, why not? If Yes, see question B.

B. What is the maximum build-out for the proposed facility?

A second carrier could be added to the current wood pole utilizing the NextG fiber network and custom equipment designed by NextG for this purpose. No more than a second carrier is recommended due to structural loading and climb space concerns.

V. GRADING: Will there be any grading associated with the project? Y [N]

If yes, answer below. If no, go to ACCESS.

(NOTE: For proposed access drives over 12% grade, a clearance letter from the Fire Dept. will be required)

CUT _____ cubic yards AMOUNT TO BE EXPORTED _____ c.y.

FILL _____ c.y. AMOUNT TO BE IMPORTED _____ c.y.

MAXIMUM VERTICAL HEIGHT OF CUT SLOPES _____

MAXIMUM VERTICAL HEIGHT OF FILL SLOPES _____

MAXIMUM HEIGHT OF ANY PROPOSED RETAINING WALL(S) _____

TOTAL AREA DISTURBED BY GRADING (sq. ft. or acres) _____

What is the address of the pick-up/deposit site for any excess cut/fill?

Specify the proposed truck haul route to/from this location.

IV. ACCESS

A. Existing: Describe the existing access road(s) to the site. Include road widths, shoulders, and type of surface material.

Existing access from public right of way

B. Proposed: Described any proposed access to the proposed building site(s). Include road width, shoulders, and type of surface material proposed.

N/A

C. Does property front on a public street? [Y] N

Name of nearest public street San Ysidro Rd.

Is access to be taken from this public street? [Y] N

Would the facility be visible from this public street? [Y] N

D. Describe any proposed street or road improvements including paving, curbs and gutters, sidewalks, street trees, utility meters, street-name signs, stop signs, street lighting, bus stops and fire hydrants.

N/A

E. Will the proposed access utilize an easement across neighboring property? Y* N

*Submit documentation which supports the applicant's use of this easement.

F. Describe proposed construction equipment access Access from street, located in public right of way

V. DEVELOPMENT AND USE

A. Existing: Describe the existing structures and/or improvements on the site.

Use	Size (sq ft)	Height
Existing wood utility pole		

B. Proposed: Describe the proposed structures and/or improvements.

Use	Size (sq ft)	Height
Wood utility pole		

C. Will any structures be demolished or removed? no If so, please list them here as requested.

Current Use	Historic Use	Age

D. Describe all other existing uses of the property.

Public right of way

E. How will the project affect the existing uses of the property (i.e. interference with existing landscaping, driveways, number of parking spaces, etc.)?

No change, public right of way

F. Describe any other historic use(s) of the property. This may include agricultural (include crop type), commercial, or residential uses.

N/A

G. How far away is the closest residentially zoned parcel? (If distance is unknown, give general idea, i.e. less than half a mile, several miles or adjacent parcel)
Adjacent parcel

H. Are there any noise-sensitive uses or "receptors" on the property or nearby? (i.e. houses, schools, hotels, etc.) And if so, how close are those noise sensitive receptors?
N/A

I. Provide a short description of the land uses surrounding the site.

North RECREATIONAL

South RESIDENTIAL

East RESIDENTIAL

West RESIDENTIAL

Estimate the cost of development, excluding land costs. $2,500.00

VI. SITE INFORMATION

A. Is this property under an Agricultural Preserve Contract? Y [N]

B. Describe the soil characteristics.
N/A

C. Describe any unstable soil areas on the site.
N/A

D. Name and describe any year round or seasonal creeks, ponds, drainage courses or other water bodies. How is runoff currently conveyed from the site?
N/A

E. Describe any proposed drainage and/or flood control measures. How will storm water be conveyed across and from the site? Where will storm water discharge?
N/A

Refer to Best Management Practices handbooks such as "Start at the Source" by Bay Area Stormwater Management

Agencies Association, 1999 and on the Internet at www.epa.gov/npdes/menuofbmps.htm. Also handouts at the counter developed by Project Clean Water.

F. Will the project require the removal of any trees? Y [N]

If so, please list them here as requested. Attach additional sheets as necessary.

Type	Diameter (at 4' height)	Height

Explain why it is necessary to remove these trees.

N/A

G. Describe the wildlife known to inhabit or frequent the site.

N/A

H. Describe any noise sources that currently affect the site.

N/A

I. Are there any recorded prehistoric or historic archaeological sites on the property or on neighboring parcels? Y N [Unknown]

If yes, describe.

J. Describe all third party property interests (such as easements, leases, licenses, rights-of-way, fee ownerships or water sharing agreements) affecting the project site, provision of public utilities to the site or drainage off the site.

This is located in the public right of way with legal access allowed by public utilities

K. Will any other agencies (such as CA Fish & Game, US Fish & Wildlife, Army Corp. of Engineers, Regional Water Quality Control Board) require permits for the project? If so, list them here.

No

L. Have you incorporated any measures into your project to mitigate or reduce potential environmental impacts? Yes If so, list them here. (Examples include tree preservation plans, landscaping plans, aesthetic mitigation by painting or disguising of facility.)

NextG Networks, Inc. construction techniques policy is available upon request.

VII. PARCEL VALIDITY

P&D will not accept an application for development on vacant, unimproved property without clear evidence that the property is a separate legal lot. Acceptable evidence of a separate legal lot include any of the following which show the subject property in it's current configuration: a recorded Parcel or Final Map, a recorded Certificate of Compliance or Conditional Certificate of Compliance, an approved Lot Line Adjustment, a recorded Reversion to Acreage, a recorded Voluntary Merger or an approved Lot Split Plat.

A. Type of evidence provided to demonstrate a separate, legal lot: N/A

Copy of evidence attached: ☐Yes ☐No

Reference number for evidence supplied: _____

B. Date current property owner acquired the property: _____

C. Date property was acquired in its present configuration: _____

D. Does the applicant own adjacent property?

Address(es): _____

E. Is this parcel part of property that the applicant previously subdivided?

Map Number: _____ Deed Number: _____

VIII. PUBLIC/PRIVATE SERVICES

A. WATER:

1. Is landscaping proposed for this project? Y [N]
2. If so, how would the proposed landscaping be irrigated? _____

_____

B. FIRE PROTECTION

1. Is the project in a high fire hazard area? Circle one: [Yes] No
2. Fire protection is (will be) provided by the Montecito Fire Department.
(Montecito, Summerland, S.B. County)

HAZARDOUS WASTE/MATERIALS

Please read and answer the following questions if, in the known history of the property, there has been any storage (above or underground) or discharge of hazardous materials or if the proposal includes storage, use or discharge of any hazardous material. Hazardous materials include pesticides, herbicides, solvents, oil, fuel, or other flammable liquids. Attach additional sheets if necessary.

Past & Present:

List any hazardous materials which have been or are currently stored/discharged/produced on the property. Describe their use, storage and method of discharge. Provide dates where possible.

N/A

If a characterization study has been prepared, please submit it with this application.

Is the project site on the County Site Mitigation list? Y N Unknown

Is the site on the CA Hazardous Waste and Substances Sites list? Y N Unknown

Proposed Project:
List any hazardous materials (i.e. batteries, fuel tank) ~~proposed~~ to be stored/discharged/produced on the property. Describe the proposed use and method of storage and disposal.

N/A

C. UTILITIES:

1. For each of the following service improvements note whether it currently exists on the project site or will be required to accommodate the proposed development:

	Currently Exists	Required
_____ Electrical pedestal/rack	_____	_____
_____ Power lines	X	_____
_____ Water meter	_____	_____
_____ Water storage tanks (size:_____)	_____	_____
_____ Telco pedestal/rack	_____	_____
_____ Telephone lines	X	X
_____ Storm drains	_____	_____
_____ Other	_____	_____

(**Note:** Staff may require information regarding the location, depth, and width of trenching)

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.

NEXTG NETWORKS, INC of CALIFORNIA 8-05-09

Print name and sign – Firm Date

SHARON JAMES 8-05-09

Print name and sign - Preparer of this form Date

SHARON JAMES for NEXTG NETWORKS of CALIFORNIA, INC 8-05-09

Print name and sign - Applicant Date

Print name and sign - Agent Date

Print name and sign - Landowner Date

STATE OF CALIFORNIA
Arnold Schwarzenegger, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

July 14, 2009

Sharon James
NextG Networks, Inc.
2216 O'Toole Avenue
San Jose, CA 95131

Dear Ms. James:

NextG Networks of California (NextG) submitted a Notice of Proposed Construction (NPC) for the installation of micro-antennae and other associated equipment on behalf of Metro PCS in the City and County of Santa Barbara, California, including the communities of Carpinteria, Montecito and Summerland. The NPC requests the Energy Division to act upon NextG's request for a determination that the proposed project is consistent with the activities identified as categorically exempt from the California Environmental Quality Act (CEQA) by the California Public Utilities Commission (Commission).

In January 2003, the Commission granted NextG the authority to operate as limited facilities-based (LFB) carrier in California. Aside from providing resold local and interexchange services, NextG was prohibited from engaging in the construction of telecommunications facilities, other than equipment installed in existing structures.

In May 2006, NextG submitted A.06-05-031 seeking expansion of its LFB authority to include the installation of micro-antennae and other related equipment in California. In the application, NextG stated that its projects may include the installation of a limited number of new poles, small scale or micro-trenching, conduit installation, and the installation of laterals. Under D. 07-04-045, the Commission determined that the projects proposed by NextG fell within one of several categorical exemptions identified under CEQA, and that further environmental review would not be required.

The Energy Division has reviewed NextG's proposal to construct the Metro PCS in the City and County of Santa Barbara and has determined that the proposed construction activities are consistent with the activities identified by the Commission as categorically exempt from CEQA. The Energy Division hereby grants NextG with the authority to proceed with the construction of the project as described in the NPC dated June 23, 2009.

Sincerely,

Jensen Uchida
California Public Utilities Commission
Regulatory Analyst

Notice of Exemption

Form D

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

☐ County Clerk
County of _____

From: (Public Agency) California Public Utilities Commission

505 Van Ness, SF CA, 94102
(Address)

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

Project Location - Specific:

Santa Barbara, Montecito, Summerland, Carpentiria

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 Area 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: _____ Date: 7/20/09 Title: Analyst

☑ Signed by Lead Agency
☐ Signed by Applicant

Date received for filing at OPR: _____

January 2004

ATTACHMENT A: FINDINGS

1.0 CEQA

1.1 CEQA Guidelines Exemption Findings

1.1.1 The proposed project was found to be exempt from environmental review pursuant to Sections 15061(b)(3), 15301(b), 15301(c), 15302(c), and 15304(f) of the Guidelines for Implementation of the California Environmental Quality Act (CEQA) by the California Public Utilities Commission (CPUC). Please see the Notice of Exemption, prepared by the CPUC on July 20, 2009 included in Attachment C of the staff report.

2.0 MONTECITO LAND USE DEVELOPMENT CODE

2.1 Land Use Permit Findings (Sec. 35.472.110)

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 4.0, 6.2 and 6.3 of the staff report, incorporated herein by reference, the project would be in conformance with all applicable provisions of the Montecito Land Use & Development Code, the Comprehensive Plan and the Montecito Community Plan. Therefore this finding can be made.

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

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

2.2 Commercial Telecommunication Facility Findings (Sec. 35.444.010.G)

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

As discussed in Sections 4.0, 6.2 and 6.3 of the staff report, incorporated herein 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 "very 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 obtrusive 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 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, 6.2 and 6.3 of the staff report, incorporated herein by reference, collocating on the existing utility infrastructure allows the facility to blend 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 review authority as provided in Subsection D.***

Exemption provision Section 35.444.010.D2 states that 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.

As analyzed in Sections 4.0, 6.2 and 6.3 of the staff report, incorporated herein by reference, the proposed project complies with all required development standards of the telecommunication ordinance, with the exception of Development standard 2d which 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 an undergrounded equipment box at this location 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 shall be operated within the frequency range allowed by the Federal Communications Commission and complies with all other applicable safety standards.***

The applicant submitted a projected emission report by Jerrold Bushberg, Ph.D., dated April 29, 2009, as a part of the project application for 09LUP-00000-00320.[4] 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

[4] On file with P&D and available upon request.

feet) and therefore the facility is well within the FCC's health and safety limits. Therefore this finding can be made.

2.3 Infrastructure Services, Utilities and Related Facilities (Sec. 35.430.100)

2.3.1 ***Approval of a Coastal Development Permit (Section 35.472.050) or a Land Use Permit (Section 35.472.110) or Zoning Clearance (Section 35.472.190) shall require that the review authority first find, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (e.g., water, sewer, roads) are available to serve the proposed development.***

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

Montecito Union School

—A California Distinguished School —

Richard R. Douglas, Superintendent
Kristin Bergstrom, Principal

Lawrence Doherty
Senior VP, Business Development
Western Region
NextG Networks, Inc.
2216 O'Toole Ave.
San Jose, CA 95131

Dear Mr. Doherty:

The Montecito Union Board of Trustees adopted the attached resolution during their Board Meeting held on October 27, 2009. Montecito Union School has a long history with the issue of Electro Magnetic Fields. The District worked closely with the Southern California Edison Company a few years ago to eliminate the EMF issue at Montecito Union.

After all the work we have done to reduce the EMF issue at Montecito Union School, I am sure you can understand the immediate concerns of many people who are uneasy about the placement of a cell antenna directly across the street from school. I believe the decision to place the antenna in the proposed location was a poor decision. The proposal hits an emotional trigger for all of us involved in the EMF issue.

With this background in mind the Board of Trustees adopted Board Resolution 09/10-04, resolving that NextG Networks of California, Inc. relocate the proposed cell antenna as far away from children as possible.

Sincerely,

Dick Douglas

Dick Douglas
Superintendent
Montecito Union School District
385 San Ysidro Road
Santa Barbara, CA 93108

Montecito Union School District
Board Resolution 09/10-4
Request to Relocate Cell Antenna

Whereas: NextG Networks of California, Inc. is under contract to build a network for cellular service from Goleta to Carpinteria; and

Whereas: NextG Networks of California, Inc. has proposed to place a 26" antenna on an existing 39' Verizon pole located across the street from Montecito Union on San Ysidro Road; and

Whereas: Children may congregate or walk in the vicinity of the proposed antenna; and

Whereas: Montecito Union has been a leader with regard to our efforts and continued vigilance in reducing the issue of Electro Magnetic Fields (EMF) on the school site; and

Whereas: Scientists continue to seek to study the effects of EMF and radiofrequency radiation (RF); and

Whereas: Montecito Union recognizes the desire of parents to limit their children's exposure to radiation of all types as much as possible;

Now, Therefore Be It Resolved, that the Montecito Union Board of Trustees requests NextG Networks of California, Inc. to relocate the proposed cell antenna as far away from children as possible.

Ayes 5 Noes: 0 Absent: 0 Not Voting: 0

Ms. Carissa Smith, President

Mrs. Karen Anderson, Clerk

Mr. Brett Matthews, Member

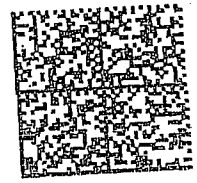
Mrs. Mary Morouse, Member

Dr. Bob Nagy, Member

Richard R. Douglas, Superintendent & Secretary to the Board

Adopted: October 20, 2009

Montecito Union School
A California Distinguished School
385 San Ysidro Road
Santa Barbara, CA 93108



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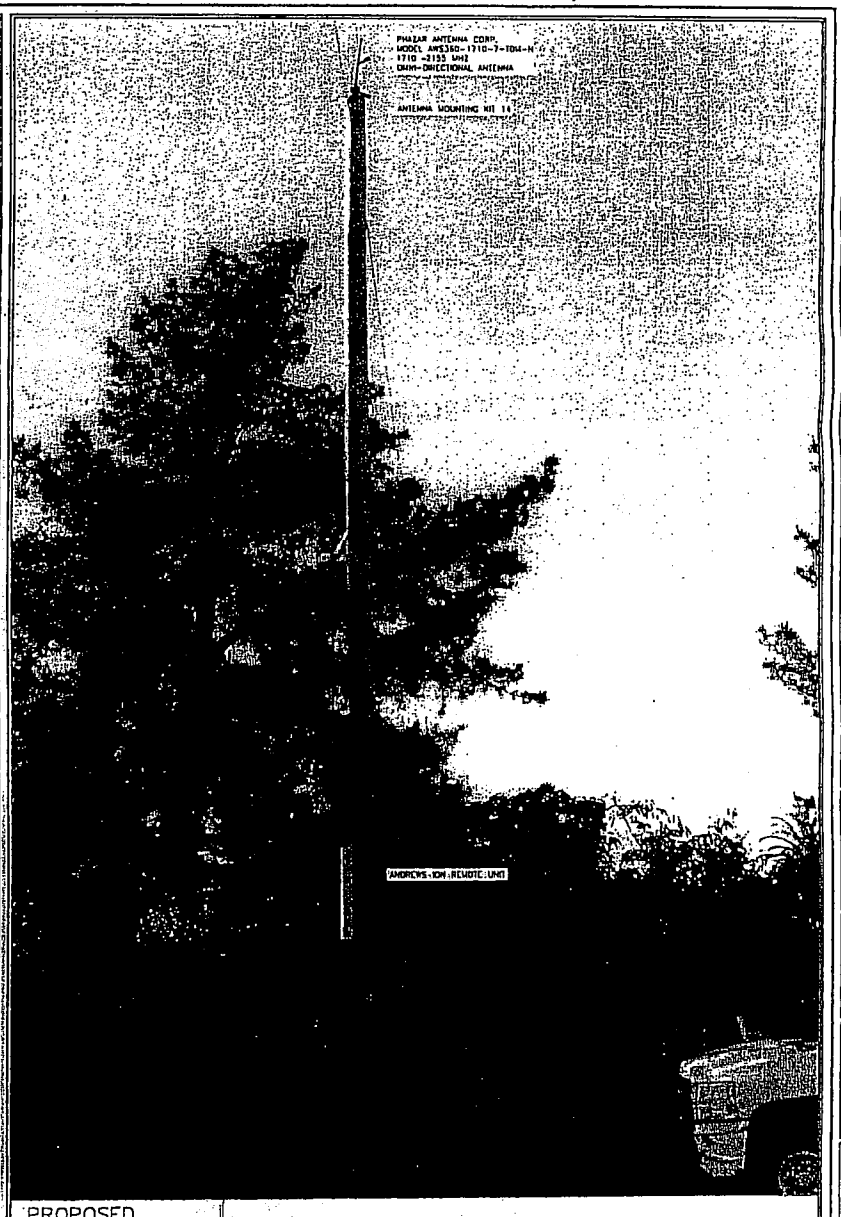
11/10/2009
Mailed From 93108
US POSTAGE

Lawrence Doherty
Senior VP, Business Development
Western Region
NextG Networks, Inc.
2216 O'Toole Ave.
San JOse, CA 95131

95131+1324

EXISTING



PROPOSED

NextG Networks, Inc.

PROJECT INFORMATION:

MPC1035CA-ESB1015
COUNTY OF SANTA BARBARA, CA 93102

ESB-15

202 SAN YSIDRO (NE CORNER)

CURRENT ISSUE DATE:

07/13/2009

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks, Inc.

RCP

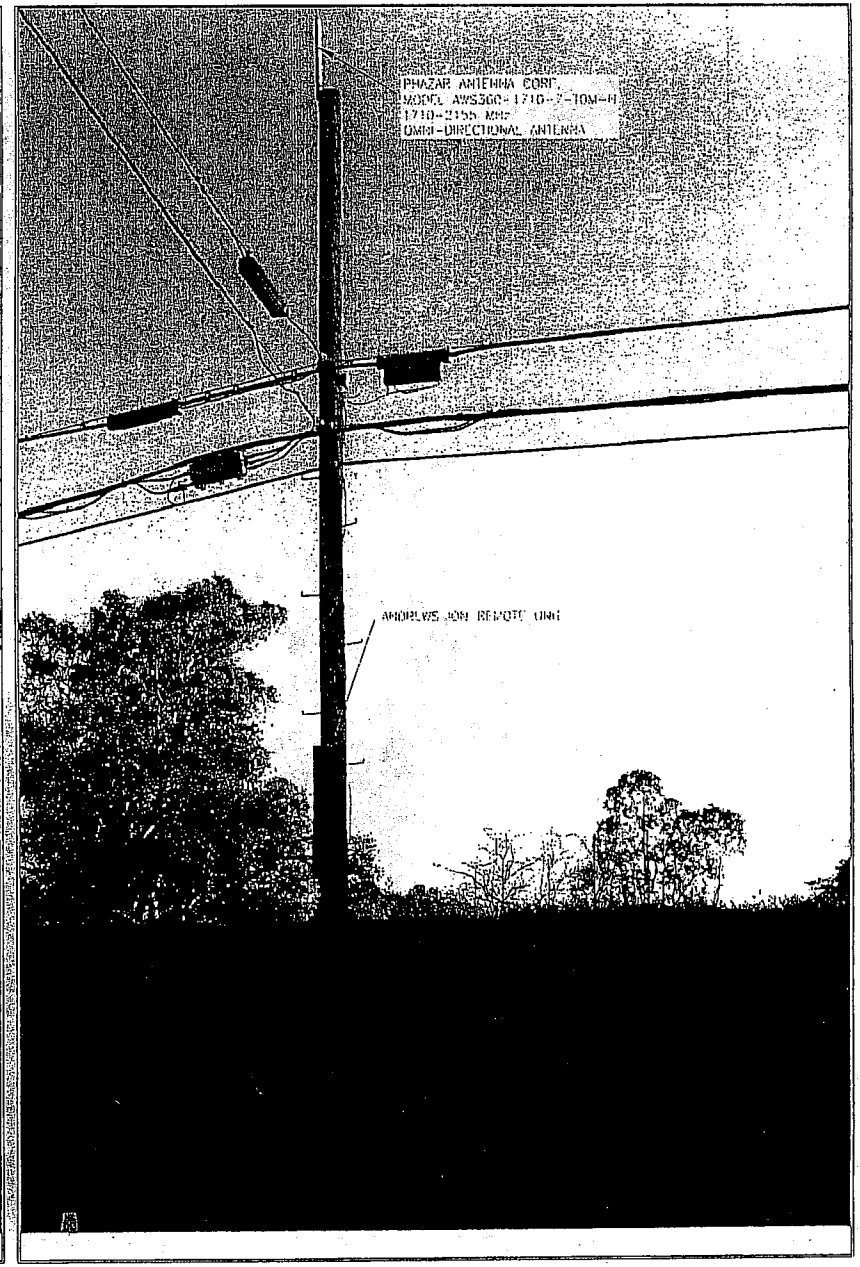
SHEET TITLE:

POLE TOP MOUNT PHOTOSIM

SHEET NUMBER: REVISION:

0

0 OF 0



MPC1035CA-ERRN01A
EAST SANTA BARBARA
SANTA BARBARA, CA 93108

01/07/2010

HP COMMUNICATIONS
INC.

PHOTOSIM

1

1 OF 1

NextG Networks

EMPOWERING NEXT GENERATION WIRELESS NETWORKS

Corporate Headquarters:

NextG Networks, Inc.
2216 OToole Ave.
San José, California 95131

Tel: (408) 954-1580
Fax: (408) 383-5397
Web: www.nextgnetworks.net

Writer's Address:

Patrick S. Ryan
NextG Networks, Inc.
1444 Blake Street
Denver, Colorado 80202

Tel: (303) 835-3574
Fax: (303) 265-9737
Email: pryan@nextgnetworks.net

April 26, 2010

VIA EMAIL AND HAND DELIVERY

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 NextG Land Use Permit 09LUP-00000-00320

Dear Chair Phillips and Commissioners:

On March 10, 2010 the Planning and Development Department ("P&D") issued its notice and intent to approve several NextG land use and coastal development permits. On March 22, 2010, one of those permits was appealed by a group of individuals (collectively "Appellants") to the Montecito Planning Commission (the "Commission"). Specifically, the current appeal involves Land Use Permit No. 09LUP-00000-00320. NextG learned by letter dated April 15, 2010 that the Commission has granted a hearing on the appeal at the Commission meeting on April 28, 2010. NextG intends to attend the April 28, 2010 hearing and oppose the appeal. In advance and for the record, NextG submits the following substantive response to the arguments raised in the appeal.[1]

Appellants' appeal and objections to the approval of this permit is unsupported by both the facts and the law. The P&D decision to issue NextG this Land Use Permit was well-considered, complete, and in fact is the only lawful result under the Santa Barbara County Code, the Montecito Land Use and Development Code, California State law, and Federal law.

NextG's Applications Satisfy All Standards And Criteria For Approval

[1] NextG notes that the Santa Barbara Board has recused the Commission from consideration of an earlier-filed appeal of NextG installations substantially similar to this present appeal. To the extent that the grounds for recusal of the Commission in the prior action are applicable here, the Commission should be recused from acting on this appeal.

The application at issue here is for the installation of a single, very small wireless telecommunications antenna and associated equipment on an existing utility pole in the public rights of way. NextG's antenna and equipment is in fact smaller and less intrusive than many other utility and communications attachments to the same and surrounding utility poles - a fact admitted by the Appellants. As demonstrated by the photograph and photosimulation that accompany NextG's initial application (Exhibit 1 hereto), NextG's facilities present an extremely low visual impact, blending into the already existing utility right of way facilities. There are already at least two other utilities attached to these poles, and approximately four fiber splice equipment enclosures on the strands, each of which is larger than NextG's antenna.

The County and Montecito have already determined in their ordinance that "very small facilities" precisely like NextG's are the least intrusive means of closing gaps in wireless coverage. As discussed below, the County and Montecito have adopted Code provisions that recognize that facilities that are the size of NextG's, installed on utility poles in the public right of way, are most favored options for installing wireless telecommunications facilities because they will have no adverse impact. Having reached that conclusion and created a process to promote the deployment of such facilities, the Planning Commission cannot now deny NextG's application.

Specifically, the MLUDC sets forth standards and processes by which wireless telecommunications facilities may be permitted within Montecito. The purpose of these standards and processes is to promote the orderly development of commercial telecommunications facilities and ensure compatibility with surrounding land uses. MLUDC § 35.444.010.A. MLUDC § 35.444.0010.C establishes what types and sizes of commercial telecommunications facilities are compatible with surrounding land uses, and set forth processing requirements to permit those facilities.

The permit at issue here would authorize a single distinct "node" installation on an existing utility pole in Montecito within Santa Barbara County. The node consists of a singular omnidirectional "whip" (or stick) antenna that is approximately twenty-four inches long and one inch in diameter and equipment that is approximately thirty-three inches long, six inches wide, and six inches deep, both of which will be attached to an existing utility pole in the public right of way. The node, along with associated fiber optic lines, will enable NextG to provide telecommunications services, specifically RF transport services, to licensed wireless telecommunications providers and other large users of telecommunications.[2]

Accordingly, NextG's node at issue here falls under the definitions of "Telecommunications Facility" and "Wireless Telecommunications Facility" set forth in

[2] Consistent with the County's permitting practice and permitting exemptions, the fiber-optic lines have, for the most part, already been installed through the Community, and are not subject to any appeal.

the MLUDC,[3] and thus are subject to the permit requirements, and siting and development standards established in the MLUDC.

MLUDC § 35.444.010.C outlines a multi-level, tiered system for considering and permitting commercial telecommunications facilities. As the size and intrusiveness of the proposed facilities increase, so too does the applicable tier, applying progressively more stringent siting restrictions and approval requirements. For example Tier 1 projects are categorized as "very small facilities" under the code require only ministerial approval of a Land Use or Coastal Development Permit, while Tier 4 projects require a Major Conditional Use Permit, approval of which requires a more extensive application process and public hearings. MLUDC § 35.44.010, Table 4-10.

Under the MLUDC, commercial telecommunications facilities, like each of NextG's proposed nodes, are permitted in all zones as Tier 1 commercial facilities, requiring only a ministerial grant of a Land Use Permit if they are wireless telecommunications facilities that comply with the following:

> (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.
>
> (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

---

[3] MLUDC Section 35.500.010 defines "Telecommunications Facility" as:

> A facility that transmits or receives electromagnetic signals for communication purposes including data transfer. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; equipment buildings; parking areas; and other accessory development. It does not include facilities staffed with other than occasional maintenance and installation personnel or broadcast studios.

Likewise, MLUDC Section 35.500.010 defines "Wireless Telecommunications Facility" as:

> A commercial facility that transmits and/or receives radio communication signals through the air for cellular, personal communication services, pagers, and/or similar services. The facility may include: antennas, radio transmitters, equipment shelter or cabinet, air vents, antenna support structure, air conditioning unites, fire suppression systems, and emergency back-up generators including fuel storage.

that there will not be a negative visual impact. 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.

(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.

MLUDC § 35.444.010.C.1.

There is no dispute in this case that NextG's node consists of a single omnidirectional antenna and associated equipment that is approximately 1,212 cubic inches – or approximately 500 cubic inches less than one cubic foot. The node includes only one antenna, and is to be mounted on an existing operational public utility pole, that based upon P&D's original approval is not being considered for removal. The antenna will be attached to the pole in such a fashion that it does not extend beyond the top of the pole – indeed even if it did extend beyond the top of the pole the antenna wouldn't be long enough to extend more than 40 inches above the pole. Clearly, P&D correctly determined that NextG's proposed node complies with the Tier 1 standard, and is permitted facilities subject only to Land Use and Coastal Development Permits.

The Appellants argue, in passing and without explanation or support, that NextG's node installations in Montecito ~~should be~~ treated not as individual installations under the Tier 1 process, but collectively as a group under the Tier 4 framework. The Appellants'' argument is meritless. The MLUDC establishes that the Tier 4 permitting standards are applicable to:

a. Wireless telecommunication facilities *that may not be permitted in compliance with [any other processing standard or tier]* ~~but do comply with the following development~~ standards...

(1) The height of the antenna and associated antenna support structures shall not exceed 75 feet.

(2) The base of a new freestanding antenna support structure shall be set back from a lot with a residential zone designation a distance equal to five times the height of the antenna and antenna support structure, or 300 feet, whichever is greater.

(3) If the facility is proposed to be located on a lot with a residential zone designation as identified in Section 35.404.020 (Zoning Map and Zones), or on a lot with a Recreation (REC)

zone designation, or does not comply with Subsection 4.a.(2) above, the Montecito Commission, in order to approve a Conditional Use Permit, shall also find that the area proposed to be served by the telecommunications facility would otherwise not be served by the carrier proposing the facility.

b. Other telecommunication facilities as follows are allowed in nonresidential zones as identified in Section 35.404.020 (Zoning Map and Zones):

(1) Facilities that are subject to regulation by the Federal Communications Commission or the California Public Utilities (e.g., AM/FM radio stations, television stations). Such facilities may include: equipment shelters, antennas, antenna support structures, and other appurtenant equipment related to communication facilities for the transmission or reception of radio, television, and communication signals.

(2) Other commercial telecommunication facilities that exceed 50 feet in height.

These do not include wireless telecommunication facilities that are subject to the provisions of C.4.a. above, or amateur radio facilities that are subject to the provisions of Section 35.444.020 (Noncommercial Telecommunication Facilities).

MLUDC § 35.444.010.C.4 (emphasis added). The plain language of the Code makes clear that Tier 4 is not the applicable standard for wireless telecommunication facilities that may be permitted under any other processing tier. Because NextG's Nodes fall squarely within the definition of Tier 1, they cannot be Tier 4.

Upon deeper investigation into the Tier 4 standard, it is clear that the description of facilities to which Tier 4 processing applies does not remotely resemble NextG's proposed nodes. Tier 4 clearly contemplates large, freestanding structures like traditional cell towers or monopoles. NextG's small omnidirectional antennas and equipment attached to existing public utility poles in the public rights-of-way are nothing like the larger freestanding support structures Tier 4 encompasses. Based on the language and specifications in the MLUDC for Tier 4 permitting, it is nonsensical to even attempt to apply Tier 4 standards to the collective facilities in question.

The argument that Tier 4 is the appropriate standard for the two node sites at issue is illogical and indefensible based on NextG's equipment specifications, which are undisputed, and the plain language of the MLUDC. Nothing in MLUDC § 35.444.010 contemplates treating multiple interconnected installations under a collective permitting process, nor does the MLUDC grant the Commission the authority to make such a decision. As explained above, each individual node clearly meets the Tier 1 standard for approval.

Moreover, when NextG first approached P&D about the permitting process in 2004 and 2005, and then specifically with the current project in early 2009, the various permitting processes under the MLUDC were discussed. The requirements of the codes were considered and P&D determined that under the requirements of the MLUDC each individual installation would require a permit, but that the network as a whole was governed by Section 7901 of the California Public Utilities Code and Sections 253 and 332 of the Federal Telecommunications Act (47 U.S.C. § 253; 47 U.S.C. § 332). The Appellants' arguments ignore local, state, and federal laws governing NextG's network, and this application in particular.

NextG's Facilities Meet All Other Applicable Tier 1 Requirements

As explained above, NextG's node facilities comply with and should be considered under the Tier 1 standard. Moreover, as the P&D staff correctly ~~found~~, NextG's ~~facilities~~ also meet all the other development standards applicable to "Commercial Telecommunications Facilities" as outlined in MLUDC § 35.444.010.D.

The Appellants assert, without support, that the facilities "are not adequately setback from habitable structures." The proposed node facilities are all to be located on an existing, operating public utility pole. As a consequence, NextG's proposed nodes need not comply with any setback requirements. *See* MLUDC § 35.444.011.D.1.a. To the extent that the Appellants'' assertion is a veiled objection to potential RF emissions, it is not grounds for denying NextG's permits. 47 U.S.C. § 332(c)(7)(B)(iv). Also by virtue of being attached to an existing utility pole, and not extending past the top of the pole, NextG's facilities will comply with all zoning height requirements and will be installed at a height above the reach of the general public, and thus in compliance with MLUDC § 35.444.010.D.1.b, c, & d. There is no basis to require more of a setback for the facility in question than the current setback that exists throughout Montecito for all utility poles and thus MLUDC § 35.444.011.D.1.a explicitly exempts antennas on utility poles from set back requirements.

Similarly, because NextG's facilities will be attached to an existing utility pole, no new structures will be constructed that would require any ground disturbing activity. Therefore, the node will not disturb existing vegetation, environmentally sensitive areas, or prime agricultural soils, in compliance with MLUDC § 35.444.010.D.1.l & D.2.b, e, & f.

None of the facilities at issue here are located in or on a designated historical landmark, and thus are in compliance with MLUDC § 35.444.010.D.1.e. NextG submitted a radiofrequency emissions report with its applications. The report, by Jerrold Bushberg, Ph.D. dated April 29, 2009 establishes that the proposed facility will meet the FCC's emissions requirements, as required by MLUDC § 35.444.010.D.1.f. The proposed facility is to be located in the public rights-of-way, thus, in compliance with MLUDC § 35.444.010.D.1.g, there are already roads available to access the facility, and any temporary parking necessary will be provided by existing public parking in the surrounding areas. NextG's facility does not include any lights or lighting, therefore it complies with MLUDC

§ 35.444.010.D.1.h. The proposed facility is not located within an airport safety zone. MLUDC § 35.444.010.D.1.i. NextG's node is proposed to be painted with non-reflective brown paint to match the pole to which it is attached. *See* MLUDC § 35.444.010.D.1.j & k. NextG's node will all derive its electric power from Southern California Edison on the utility pole to which it is attached. NextG does not propose any new utility conduits or back-up generators to supply power to its facility in compliance with MLUDC § 35.444.010.D.2.a.

NextG's proposed node is exempt from the requirements of MLUDC § 35.444.010.D.2.d. NextG's proposed facility does not include any "support facilities" identified by those sections. Those provisions refer to large intrusive and cumbersome support facilities such as vaults, equipment rooms, utilities, equipment enclosures. *See* MLUDC § 35.444.010.D.2.d. NextG's facility consists of an antenna and its associated equipment which, under Tier 1, is classified as "very small facilities" with a total volume of approximately ~~1,212~~ cubic ~~inches – or~~ approximately 500 cubic inches less than the one cubic foot of antenna and associated equipment allowed under Tier 1. *See* MLUDC § 35.444.010.C.1.a.1. Furthermore, not undergrounding NextG's proposed facility eliminates the potential for harmful ground disturbing activities since NextG's facility may be attached to and blend in with an operational utility pole. Moreover even if MLUDC § 35.444.010.D.2.d were somehow applicable to NextG's proposed node, it is obviously not technically feasible to underground NextG's antenna and still provide service. Therefore, any such requirement would effectively prohibit NextG's deployment of its telecommunications facilities in violation of Sections 253 and 332 of the Telecommunications Act of 1996. 47 U.S.C. §§ 253 & 332(c)(7).

NextG's proposed facility is in compliance ~~with the~~ development standards established by MLUDC § 35.444.010.D.3. Specifically, the singular whip antenna that is approximately 24 inches long and its associated facilities which are similarly small in stature are designed to blend in with the surrounding environment and be minimally visible. Indeed, they are to be mounted on an existing, occupied public utility pole that is amongst surrounding trees and the surrounding developments, including other existing on-pole utility boxes, cables, and transformers. Additionally, the facility will be painted ~~brown to blend in with the pole to which it is attached and because they are narrower than~~ the pole itself will not extend past the profile of the pole. All of these precautions ensure that the facility will be minimally visually intrusive and in compliance with MLUDC § 35.444.010.D.3.

Finally, NextG has satisfied all relevant requirements under the California Environmental Quality Act ("CEQA"). The California Public Utilities Commission ("CPUC") is the only entity with broad discretionary decision-making authority over NextG's proposed services, facilities and construction through the state, and as such, is the lead agency. Cal. Code Regs. tit. 14, § 1505(b). As lead agency, the CPUC's CEQA determinations are "final and conclusive," except under certain exceptional circumstances, and binding on all parties. *Id*, §§ 15050, 15162. The CPUC published a Notice of Exemption through the CEQA clearinghouse, and no party has challenged it. A copy of

the Notice to Proceed that was issued by the CPUC on July 14, 2009, as well as the Notice of Exemption that was published by the CPUC, is attached.

NextG Is Not Required To Establish That A Gap In Service Exists Or Eliminate Potential Alternative Sites

Appellants argue that NextG has not established that there is a gap in service that needs to be filled or gone through an analysis of potential alternatives. However, there is no requirement in the MLUDC or any other County Code requiring that NextG establish such a gap or demonstrate the lack of alternatives, and Appellants cite no such requirement. Accordingly, it cannot be grounds for denial of NextG's permits.

Indeed, the County and the Commission are prohibited from denying NextG access to the public rights of way based on alleged potential alternative locations, and NextG is not required to demonstrate a gap in service that creates a need for the deployment. Public Utilities Code § 7901 grants NextG a state-wide franchise to occupy the public rights of way that cannot be denied. In particular, it cannot be denied based on the assertion that there may be alternative locations for NextG to use, and NextG is not required to establish any "gap in service" that requires its deployment. Pursuant to California law, NextG is a "telephone corporation" that constructs "telephone lines." Section 7901 of the California Public Utilities Code grants "telephone corporations" an absolute right to deploy their "telephone lines" in the public rights of way throughout the state. The Public Utilities Code defines "telephone lines" to include "all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wire." Cal. Pub. Util. Code § 233. Accordingly, the California Legislature has decided that installation of telephone lines, such as NextG's equipment, on utility poles in the public rights of way is a compatible with the use and location of public utility poles generally.

The Montecito Overhead Utility Policy Is Not Grounds For Denial

Appellants argue that the Montecito Association adopted an "Overhead Utility Policy," that is meant to promote a policy of undergrounding utilities in Montecito. Appellants point to this as a demonstration of their community commitment to aesthetics. However, this is not a reason that P&D can deny NextG's Land Use Permit. In addition to the fact that federal and state laws prohibit Montecito from discriminating against NextG by prohibiting it from attaching to existing utility poles where other telephone corporations are allowed to attach, a wholesale undergrounding requirement is not in any of the applicable local Codes or ordinances. Thus, P&D could not make a permitting decision based on a desired goal of undergrounding all utilities.

Indeed, the establishment of an underground district is a formal process that is far beyond a community's desire—even if a written desire by the Association—and requires that funds be allocated pursuant to the process set forth by the California Public Utilities

Commission ("CPUC") in Case No. 8209 (Sep. 19, 1967). Essentially, under the applicable CPUC tariffs and rules that apply, Southern California Edison (under Rule 20) and AT&T (under Rule 32) must be participants. Additionally, an official Underground Utility District ("UUD") must be formed, and a UUD can *only* be formed after consultation with the affected utilities and after a public hearing to establish the project. Santa Barbara Code of Ordinances ("SBCCO") at Section 34-2. In the case of the County of Santa Barbara, the Board of Supervisors has established an Underground Utilities Committee, consisting of more than 24 members, which meets on these issues. The pole in question is not subject to any approved UUD nor is it formally scheduled for any public hearing for consideration as such.

Appellants seek to avoid this hurdle by arguing that they believe that at some unspecified point in the future a pole to which NextG has been permitted to attach may be recommended for removal in favor of undergrounding utilities, and further, that the Code section voiding any permits for such a pole might not be complied with, or will be struck down as unlawful. Appellants are actually proposing that P&D should make its decisions based on the potential that the Code under which it operates, and is bound by, might not be complied with or upheld as lawful in the future. Assuredly, regardless of Appellant's uncertainty with the validity or operability of the Code as it is, neither P&D nor this Commission can act contrary to the Code, while it is still in effect. Yet, if the County were to take this action based on the desire to underground in the future, it would completely usurp its own code since there has been no public hearing to designate the area in question as a UUD according to SBCCO Section 3-2.

NextG's Facilities Will Be Compatible With The Existing Above Ground Right Of Way Infrastructure

Appellants readily admit that the pole where NextG's Node will be located already has utility infrastructure attached to it, and that the other utility poles in the area likewise contain overhead equipment and lines. There is no evidence, and there could be no evidence, that NextG's very small antenna and equipment box will not be compatible with the existing right of way infrastructure.

P&D's consideration of those very facts is enough to support their finding that the facilities at issue here are compatible with the existing and surrounding development, and located to minimize its visibility from public view. Moreover, as addressed above, to the extent Appellant's complaint is really about the type of facilities NextG is installing, their objection is preempted by state and federal law. Under Section 7901 of the California Public Utilities Code, NextG has a statewide franchise to construct its equipment "to facilitate communication by telephone," in the public rights of way, and thus they are a compatible use in the public rights of way. P&D, and now this Commission, do NOT have the option, suggested by Appellants, of finding that "no project" is an appropriate "alternative." NextG has an absolute right to deploy its facilities in the public rights of way that cannot be denied.

Also as noted above, under Section 7901.1 of the Public Utilities Code, regulations governing right of way deployment must treat all entities equally. Thus, the Commission cannot deny NextG the right to install its equipment on an existing utility pole where all other telephone and utility companies have already been allowed to do so.

Conclusion

Appellants have introduced no evidence demonstrating that NextG's single node at issue in this case was not properly granted as a Tier 1 small wireless telecommunications facility. The MLUDC, Section 7901 of the California Public Utilities Code, and Section 253 of the federal Communications Act all require that NextG's permit be granted. Accordingly, the appeal should be denied.

Very truly yours,

Patrick S. Ryan
VP of Government Relations & Regulatory Affairs

cc: Megan Lowery (County of Santa Barbara – *for case file*) (by email)
Judith Blankenship (Appellant) (by email)
Theodore Stern (Co-Appellant) (by email)
Sharon James (NextG)
T. Scott Thompson (Davis, Wright & Tremaine)

Enclosures:

1. Photograph of site and Photosimulation

SANTA BARBARA MONTECITO PLANNING COMMISSION
Staff Report for the Appeal of
NextG Networks Cellular Antenna #ESB15

Hearing Date: April 28, 2010
Staff Report Date: April 9, 2010
Case No.: 10APL-00000-00011

Deputy Director: Dave Ward
Division: Development Review South
Supervising Planner: Anne Almy
Supervising Planner Phone #: 568-2053
Staff Contact: Megan Lowery
Planner's Phone #: 568-2517

Environmental Document: Exempt Pursuant to CEQA Guidelines Sections 15061(b)(3), 15301(b), 15301(c), 15302(c) and 15304(f)

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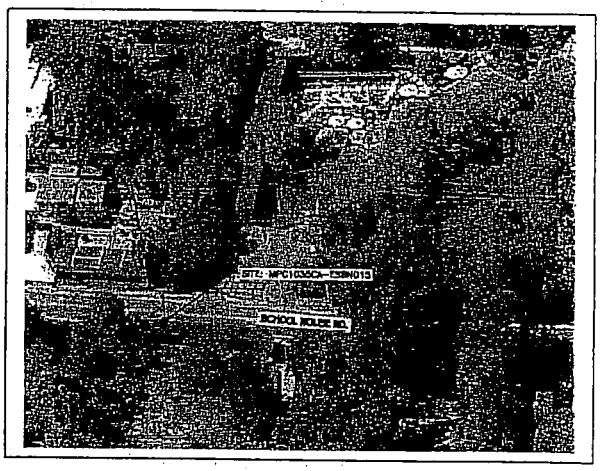

APPLICANT:
NextG Networks
Sharon James
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(805) 683-4326

This site is identified as a utility pole in the public right of way on School House Road adjacent to Assessor Parcel Number 009-080-007, Montecito, 1st Supervisorial District.

Application Filed: August 5, 2009
Permit Approved: March 10, 2010
Appeal Filed: March 22, 2010

1.0 REQUEST

Hearing on the request of Judith Blankenship and listed co-appellants, [appeal filed on March 22, 2010] to consider the Appeal, 10APL-00000-00011, of the Director's decision to approve 09LUP-00000-00320, 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. 009-080-007, located on School House Road in the Montecito area, First Supervisorial District.

2.0 RECOMMENDATION AND PROCEDURES

Follow the procedures outlined below and deny the Appeal, Case No. 10APL-00000-00011, and approve the project, Case No. 09LUP-00000-00320 marked "Officially Accepted, County of Santa Barbara April 28, 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 15061(b)(3), 15301(b), 15301(c), 15302(c) and 15304(f) 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 the 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 the 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 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[1]; and

[1] Collocation is broadly defined as one or multiple antennas mounted on an existing structure (e.g. utility pole, building, etc.)

- 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 application. Specifically, 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 Permitting Framework – Santa Barbara County Telecommunications Program

The County Telecommunications Ordinance provides for a four tiered permitting system that requires: staff level review (LUP/CDPs) for small unobtrusive facilities; Director review for more visible facilities (Director DVPs); and Zoning Administrator or Planning Commission review for larger, more complex projects (CUPs). 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 appellant group consists of eight individuals including Judith Blankenship, who filed the appeal. The grounds for appeal are specified in the appellants' letter, authored by Theordore Stern on behalf of the appellant group. Staff will address the points of contention identified in each of the sections below. Please see Attachment D for a complete copy of the appeal application and letter, dated March 21, 2010.

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

The appellants contend that the proposed project "contradicts...community goals [namely Goal LU-M-2], 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 (Additional Findings MLUDC § 35.444.010.G.1-3), as well as requirements to underground support facilities (Development Standard "2.d", MLUDC § 35.444.010.D.2.d).

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 discussed below, P&D found the project to be compatible to 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.

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'l x3'w x5'h) to full sized equipment shelters (typically 10'l 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"l x6"w x2'h, mounted on an existing pole. By using 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 E, visual comparison).

The County recognizes that while telecommunications facilities are, intrinsically, aesthetically undesirable, they serve a utility function that is growing beyond just 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 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; incorporating landscaping; utilizing 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.

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 (consistent with ordinance requirements, it measures less than one cubic foot in size), 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.

4.2 "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 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). Additionally, this limitation is included in the permit conditions of approval.

4.3 "P&D Issued the Permit Based Upon Inadequate, Incomplete or Unreliable Data and Based its Permit Decision on Inadequate Information Concerning Project Alternatives"

The 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." The County did require NextG to provide an alternative site analysis for this particular permit application. In fact, the proposed location was a result of the alternative analysis. The project application originally submitted for ESB15 to cover the San Ysidro Lane area, was initially proposed on San Ysidro Lane by the bus stop, directly across from the Montecito Union Elementary School's recreational field. Although the location complied with all zoning requirements, NextG explored alternative

[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 number of poles in the field and to create a uniform procedure for recording ownership of poles." (http://www.scjpc.org/)

locations upon the community's request. The alternative analysis looked at 26 other poles between San Ysidro Lane, School House Road and Santa Rosa Lane to provide the coverage for this area. Of the 26 poles, only one provided a feasible alternative and that was the pole at the current approved location on appeal. The current location is further from the elementary school and YMCA, and off of the main travel corridor (San Ysidro Road), addressing concerns voiced by the community with the original location. As a result, NextG resubmitted the application to move the site to the proposed location.

5.0 PROJECT INFORMATION

5.1 Site Information

Site Information	
Comprehensive Plan Designation	Urban, SRR-0.5, Montecito Community Plan area
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)	*North: Residential* *South: Residential* *East: Residential, Public Utility, School* *West: Residential*
Access	Road right-of-way, School House 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 of School House Road near its intersection with Pimiento Lane adjacent to the property at 1445 School House Road. The proposed antenna and equipment box would be mounted on an existing utility pole in the public right-of-way, at this site address. The pole is set back approximately 130 feet from the nearest habitable structure.

5.3 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 1445 School House Road in the public right of way.

The applicant is proposing to construct an unmanned wireless facility that would include one 26-inch whip omni antenna. The antenna is omnidirectional and would be mounted on 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 antenna 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 School House Road and Pimiento Road with a range of approximately 1500 – 2000 feet in each direction, providing service for Metro PCS.

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 would be painted brown or other color as recommended by the County.

5.4 Background Information

NextG Networks has applied for permits to deploy a Distributed Antenna System (DAS) throughout the south coast of Santa Barbara County. The DAS network is a relatively new approach to coverage in the urban area. It uses multiple node sites that work in conjunction with each other to distribute low emissions 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 any given location, requiring a large support structure to reach the same coverage objective.

NextG Networks has submitted 47 Tier 1 applications (LUP/CDP/CDH) to the County since August 5, 2009. The applications are for the installation of 47 different "node" or antenna sites throughout the south coast, including areas in Goleta, Santa Barbara, Hope Ranch, Montecito and Summerland. They have also applied for, and obtained in some cases, similar permits from other local municipalities such as the Cities of Goleta, Santa Barbara, and Carpinteria.

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 six applications for undergrounding cabling in the Coastal zone.

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(b)(3), 15301(b), 15301(c), 15302(c), and 15304(f), 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). A copy is available at P&D office, and on the project website http://www.sbcountyplanning.org/projects/09CNS-00032NextG/index.cfm.

6.2 Comprehensive Plan Consistency

REQUIREMENT	DISCUSSION
Land Use Element	
Land Use Development Policies, Policy 4. *Public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development.*	**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. *All commercial, industrial, and planned developments shall be required to submit a landscaping plan to the County for approval.*	**Consistent.** The CPUC recognizes NextG as a utility. Additionally, the subject pole is 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. *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.*	**Consistent.** No new structures are being erected as a part of this project. The project constitutes collocation.
Visual Resource Policies, Policy 5. *Utilities, including television, shall be placed underground in new developments in accordance with the rules and regulations of the California Public Utilities Commission, except where cost of undergrounding would be so high as to deny service.*	**Consistent.** No new developments are proposed as a part of this project, but rather the project utilizes existing infrastructure on which the facility 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

REQUIREMENT	DISCUSSION
	35.444.010.C.1.a.2 of the MLUDC, as included in the permit conditions of approval.
Montecito Community Plan	
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.*	**Consistent.** The proposed project, one node in a Distributed Antenna System (DAS), has been designed 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. *Protect public and private open space as an integral part of the community's semi-rural character and encourage its retention.*	**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 (eliminating the need for construction of a new freestanding support structure) and the components, as conditioned, 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. *The protection of citizens from elevated electromagnetic fields until the potential risk from EMF exposure can be determined.*	**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 what are generally accepted as having the potential to cause adverse health effects."[3]

[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.

REQUIREMENT	DISCUSSION
	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.
Electromagnetic, Policy E-M-1.1. *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.*	**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.

6.3 Zoning: Montecito Land Use and Development Code Compliance

REQUIREMENT	DISCUSSION
Tier 1 Requirements	
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.	**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.
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 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.	**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 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

REQUIREMENT	DISCUSSION
	pole, and therefore it is assumed that no current plans for undergrounding apply to this pole. Furthermore, conditions of approval restate this provision, deeming the permit null and void should the utility lines be placed underground at a later date.
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.	**Consistent.** The proposed antenna would be mounted on the existing 29' utility pole at a height of 29' (not exceeding 31') and therefore complies with this requirement.
Section 35.444.010.D.1 Development Standards	
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.	**Consistent.** The proposed facility would be installed on an existing, operational, public utility pole.
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]..."	**Consistent.** The proposed antenna would be mounted on an existing 29' utility pole. The top of the antenna would not exceed 31'. Therefore the facility would comply with the 100 ft. requirement, as well as the height requirement by Subsection C identified.
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 and shall comply with the height limits specified in [MLUDC Section 35.444.010.C]..."	**Consistent.** The proposed project is not in the Coastal Zone.
Standard 1.d. The general public is excluded from	**Consistent.** The proposed equipment would be

REQUIREMENT	DISCUSSION
the facility by fencing or other barriers that prevent access to the antenna, associated support structure and equipment shelter.	mounted on an existing utility pole, at a height (9') above reach of the general public.
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.	**Consistent.** The proposed project is not located in or on a designated historical landmark.
Standard 1.f. The facility shall comply at all times with all Federal Communication Commission rules, regulations, and standards.	**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 operate within the FCC requirements.
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.	**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.
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.	**Consistent.** No lighting is proposed however a standard condition of approval is proposed to ensure compliance with this standard.
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.	**Consistent.** The facility is not located within the airport safety zone.
Standard 1.j. The visible surfaces of support facilities (e.g., vaults, equipment rooms, utilities, equipment enclosures) shall be finished in non-reflective materials.	**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.
Standard 1.k. Structures, poles, towers, antenna supports, antennas, and other components of each	**Consistent.** As conditioned, the proposed facility would be painted brown to blend with the utility

REQUIREMENT	DISCUSSION
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.	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.
Standard 1.l. The facility shall be constructed so as to maintain and enhance existing vegetation through the implementation of the vegetation protection measures.	**Consistent.** No new structures are proposed to be constructed therefore no disturbance to existing vegetation is proposed.
Section 35.444.010.D.2 Development Standards	
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.	**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.
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.	**Consistent.** No new structural development is proposed as part of the project, nor is the proposed project located within an environmentally sensitive area.
Standard 2.c. Collocation on an existing support structure shall be required unless:	**Consistent.** The proposed project is collocating on an existing utility pole.
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 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.	
Standard 2.d. Support facilities (e.g., vaults, equipment rooms, utilities, equipment enclosures)	**Consistent.** The support facilities consist of a 6"x 5"x 2'8" equipment box, painted brown and

REQUIREMENT	DISCUSSION
shall be located underground, if feasible, if they would otherwise be visible from public viewing areas (e.g., public roads, trails, recreational areas).	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, with mounting brackets extrudes no further than 10" 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 impacts associated with grading or ground disturbance. Therefore, this project qualifies for an exemption from this standard and can be found consistent.
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.	**Consistent.** The proposed project is not within the Coastal Zone.
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.	**Consistent.** The proposed project is not within the Coastal Zone.
Section 35.444.010.D.3 Development Standards	
Standard 3.a. A facility shall not be located so as to silhouette against the sky if substantially visible from a state-designated scenic highway or roadway located within a scenic corridor as designated on the Comprehensive Plan maps.	**Consistent.** The proposed facility is not located on a state-designated scenic highway or scenic corridor roadway. Furthermore, the facility design complies with the County's Tier 1 "small facility" requirements as a pole and therefore would not be substantially visible.
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	**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

REQUIREMENT	DISCUSSION
not be substantially visible from public viewing areas (e.g., public road, trails, recreation areas) or is collocated in a multiple user facility.	visibility from the surrounding area.
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.	**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.
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.	**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 10" from the pole (with the mounting brackets). Additionally, as conditioned, 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.
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, 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.	**Consistent.** The proposed project is not located within the Coastal Zone or in an environmentally sensitive habitat area.

6.4 Design Review

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 Land Use Permit (09LUP-00000-00320)
C. CPUC Notice of Exemption
D. Appeal Application and Letter
E. Visual Comparison Photo
F. Project Photo Simulation
G. 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(b)(3), 15301(b), 15301(c), 15302(c), and 15304(f) of the Guidelines for Implementation of the California Environmental Quality Act (CEQA) by the California Public Utilities Commission (CPUC). Please see the Notice of Exemption, prepared by the CPUC on July 20, 2009 included in Attachment C of the staff report.

~~2.0~~ MONTECITO LAND USE DEVELOPMENT CODE

2.1 Land Use Permit Findings (Sec. 35.472.110)

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 4.0, 6.2 and 6.3 of the staff report, incorporated herein by reference, the project would be in conformance with all applicable provisions of the Montecito Land Use & Development Code, the Comprehensive Plan and the Montecito Community Plan. Therefore this finding can be made.

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

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

2.2 Commercial Telecommunication Facility Findings (Sec. 35.444.010.G)

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

As discussed in Sections 4.0, 6.2 and 6.3 of the staff report, incorporated herein 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 "very 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 obtrusive 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 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, 6.2 and 6.3 of the staff report, incorporated herein by reference, collocating on the existing utility infrastructure allows the facility to blend 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 review authority as provided in Subsection D.***

Exemption provision Section 35.444.010.D2 states that 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.

As analyzed in Sections 4.0, 6.2 and 6.3 of the staff report, incorporated herein by reference, the proposed project complies with all required development standards of the telecommunication ordinance, with the exception of Development standard 2d which 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 an undergrounded equipment box at this location 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 shall be operated within the frequency range allowed by the Federal Communications Commission and complies with all other applicable safety standards.***

The applicant submitted a projected emission report by Jerrold Bushberg, Ph.D., dated April 29, 2009, as a part of the project application for 09LUP-00000-00320.[4] 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

[4] On file with P&D and available upon request.

feet) and therefore the facility is well within the FCC's health and safety limits. Therefore this finding can be made.

2.3 Infrastructure Services, Utilities and Related Facilities (Sec. 35.430.100)

2.3.1 ***Approval of a Coastal Development Permit (Section 35.472.050) or a Land Use Permit (Section 35.472.110) or Zoning Clearance (Section 35.472.190) shall require that the review authority first find, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (e.g., water, sewer, roads) are available to serve the proposed development.***

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

COUNTY OF SANTA BARBARA

Planning and Development

LAND USE PERMIT NO: 09LUP-00000-00320

Project Name: NextG Networks Cellular Antenna #ESB15
Project Address: Public Right-of-Way on School House Rd., Montecito
A.P.N.: Adjacent to 009-080-007
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: March 10, 2010

APPEAL PERIOD BEGINS: March 11, 2010

APPEAL PERIOD ENDS: March 22, 2010

DATE OF PERMIT ISSUANCE: *(if no appeal filed)* March 23, 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, Santa Barbara 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 __X__ Yes; Permit Compliance Case (PMC) #:_____

BOARD OF ARCHITECTURAL REVIEW (BAR): __X__ 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).

WARNING! THIS IS NOT A BUILDING/GRADING PERMIT.

3. **Date of Permit Issuance**. This Permit shall be issued and deemed effective on the **Date of Permit Issuance** identified above, provided:

   a. All terms and conditions including the requirement to post notice have been met and this Permit has been signed;

   b. The **Affidavit of Posting Notice** was returned to the Planning and Development Department prior to the issuance of the Land Use Permit; and

   c. An appeal has not been filed.

4. **Time Limit.** This Land Use Permit shall expire two years from the date of issuance and be null and void if the use and/or structure for which the permit is issued has not been lawfully established or commenced in compliance with the effective permit unless a time extension is approved. *(CLUDC Section 35.82.110/MLUDC Section 35.472.110)*

NOTE: Issuance of a permit for this project does not allow construction or use outside of the project description, or terms or conditions; nor shall it be construed to be an approval of a violation of any provision of any County policy, ordinance or other governmental regulation.

OWNER/APPLICANT ACKNOWLEDGMENT: Undersigned permittee acknowledges receipt of this approval and agrees to abide by all terms and conditions thereof.

_____ / _____

Print Name Signature Date

Planning and Development Department Approval by:

_____ / _____

Planner Date

Planning and Development Department Issuance by:

_____ / _____

Planner Date

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 1445 School House Road in the public right of way.

   The applicant is proposing to construct an unmanned wireless facility that would include one 26-inch whip omni antenna. The antenna is omnidirectional and would be mounted on 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 antenna 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 School House Road and Pimiento Road with a range of approximately 1500 – 2000 feet in each direction, providing service for Metro PCS.

   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 would 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. 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.

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. 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. **Plan Requirements and Timing:** The Permittee shall restate the provisions for MPE compliance on all building plans. **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.

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.

Notice of Exemption

Form D

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

☐ County Clerk
County of _____

From: (Public Agency) California Public Utilities Commission

505 Van Ness, SF CA, 94102
(Address)

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

Project Location - Specific:

Santa Barbara, Montecito, Summerland, Carpentiria

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 Area 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: _____ Date: 7/20/09 Title: Analyst

☑ Signed by Lead Agency
☐ Signed by Applicant

Date received for filing at OPR: _____

January 2004

PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: PUBLIC RIGHT OF WAY ON SCHOOL HOUSE RD., MONTECITO

ASSESSOR PARCEL NUMBER: ADJACENT TO APN 009-080-07-00

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

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:** JUDITH BLANKENSHIP Phone: 805 969-3940 FAX: _____

Mailing Address: 1445 SCHOOL HOUSE RD (Street) SANTA BARBARA (City) CA (State) 93108 (Zip) E-mail: judithb4@cox.net

2. ~~**Owner:**~~ APPLICANT NEXT G NETWORKS OF CALIF, INC. Phone: (805) 683-4326 FAX: _____

Mailing Address: 5720 THORNWOOD DR., GOLETA, CA 93117 E-mail PRYAN@NEXTGNETWORKS.NET
(Street) (City) (State) (Zip)

3. **Agent:** — Phone: _____ FAX: _____

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

4. **Attorney:** — Phone: _____ FAX: _____

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

10APL-00000-00011

Case N NEXTG NETWORKS CELLULAR ANTENNA #ES
Super SCHOOL HOUSE RD
Applic 3/22/10
Projec SANTA BARBARA
Zoning 111-111-111

COUNTY USE ONLY

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

COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS
2010 MAR 22 PM 2:04

COUNTY OF SANTA BARBARA APPEAL TO THE :

_____ BOARD OF SUPERVISORS

__X__ PLANNING COMMISSION: _____ COUNTY __X__ MONTECITO

RE: Project Title NEXTG NETWORK CELLULAR ANTENNA #ESB 15

Case No. 09 LUP – 00000 – 00320

Date of Action 3/11/10

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

_____ Board of Architectural Review – Which Board? _____

_____ Coastal Development Permit decision

__X__ 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

__X__ 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.

THEODORE STORN — 3/18/10
Print name and sign ~~- Firm~~ — Date

Judith Blankenship — 3-18-10
Print name and sign ~~- Preparer of this form~~ — Date

JOHN C KELLY — 03.18.10
Print name and sign - ~~Applicant~~ — Date

Johanna Lambert — 3.18.10
Print name and sign - ~~Agent~~ — Date

Gary Meyer — 3.18.10
Print name and sign ~~- Landowner~~ — Date

Don MacMahon — 3/18/10

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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.

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THEODORE STERN 3/18/10

Print name and sign ~~- Firm~~ Date

SMITH POWER A. 3/19/10

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

CO APPLICANT: JOHN A. POWER 3.19.10

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March 21, 2010

Chair Michael Phillips
And Members of the Montecito Planning Commission
County of Santa Barbara
123 East Anapamu St.
Santa Barbara, CA 93101

Re Appeal of 09LUP-00000-00320
NextG Networks Cellular Antenna #ESB15
1445 School House Rd. APN 009-080-07-00

Dear Chair Phillips and Members of the MPC:

This is an appeal of the Land Use Permit decision on the above referenced case on or about March 12, 2010.

Appellants: Judith Blankenship phone: 969 3940
Mailing Address: 1445 School House Rd., Montecito, CA 93108
Email: judithb4@cox.net

Applicant: NextG Networks of CA phone: 683 4326
Email: pryan@nextGnetworks.net

Co-Appellant: Theodore Stern phone: 969 0602/cell:452 8356
Property Address: 1429 School House Rd.
Mailing Address: PO Box 567, Santa Barbara, CA 93102-0567
Email: kayandted@cox.net

A List of other appellant/aggrieved parties is attached

GROUNDS FOR THE APPEAL

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.

Exceptionally, School House Rd. is already burdened with a proliferation of utility poles and overhead structures to support community needs including not only distribution lines for electricity, telephone and cable but also high voltage power transmission lines that pass through the community as well as a large power sub-station. Much of this infrastructure is adjacent to Montecito Union School. **The proposed telecommunications facility would be one more visual blight on an already impacted area.**

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:

> 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." No such finding appears to have been made.

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 content that P&D abused its discretion by issuing a permit for facilities that do not comply with this development standard.

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.

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

Planning and Development reached its decision without appropriate analysis of the proposed NextG distributive telecommunications network to determine if the elimination of any one or more proposed antenna sites, including this subject site, would result in a significant gap in coverage. This appeal should be upheld since P&D has not performed the study ordered by the Board of Supervisors at their meeting on March 16, 2010 and the determination that this subject site is required and that no reasonable alternative may exist.

In addition to the issues addressed above, P&D erred in approving the Land Use Permit for the reasons stated below:

1. The project was improperly processed as a Tier 1 permit. The whole of the NextG distributive antenna system should have been processed as a discretionary project under Tier 4 of Montecito LUDC Chapter 35.444.
2. The pole-mounted equipment is contrary to the community's goal of undergrounding utilities.
3. The facilities are not adequately setback from habitable structures.
4. Cumulative effects of additional facilities have not been properly evaluated.
5. Decision-makers have no obligation to rely upon the CEQA exemption adopted by the CPUC and pursuant to CEQA Guidelines Section 15052 they must accept lead agency status and make appropriate CEQA findings.

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.

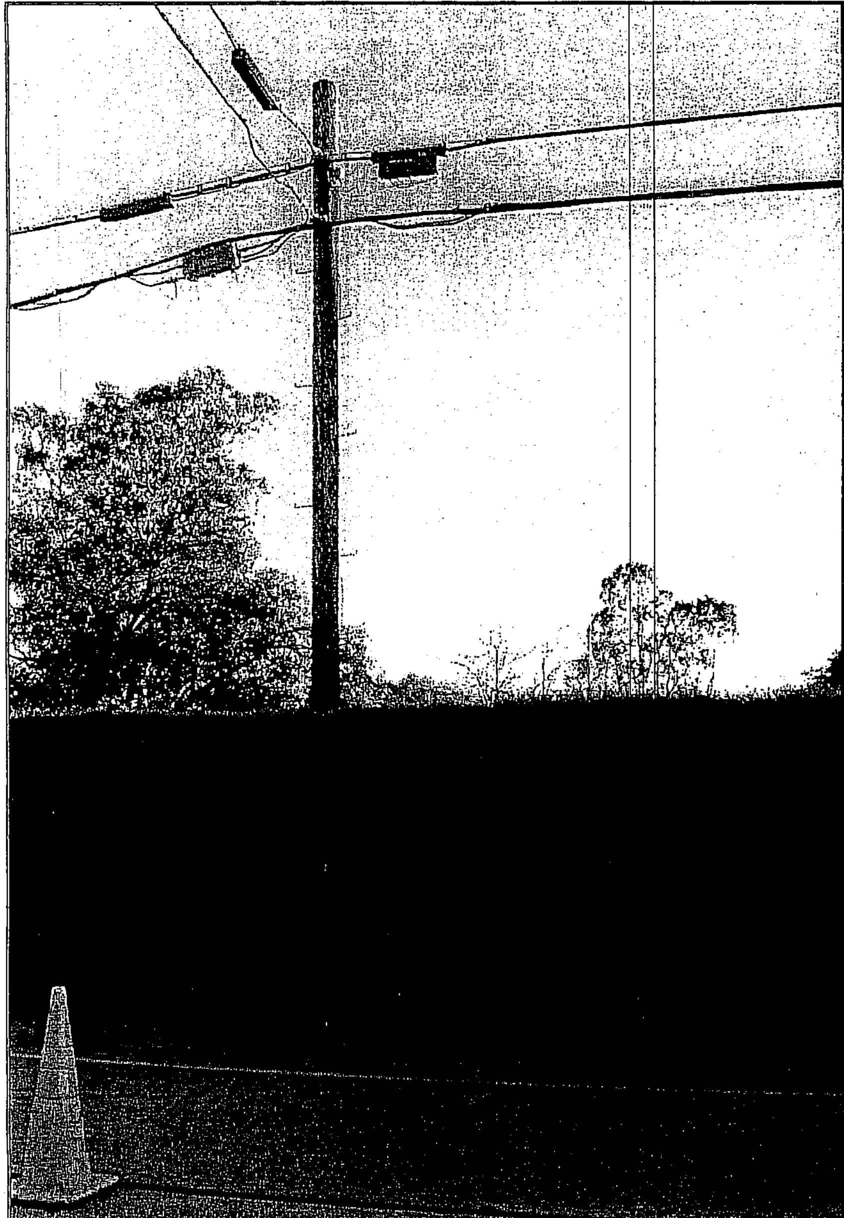
Appellants are Aggrieved Persons. (The permit here appealed was issued administratively; therefore none of the appellants had an opportunity to attend a public hearing concerning the specific action.)

APPELLANTS

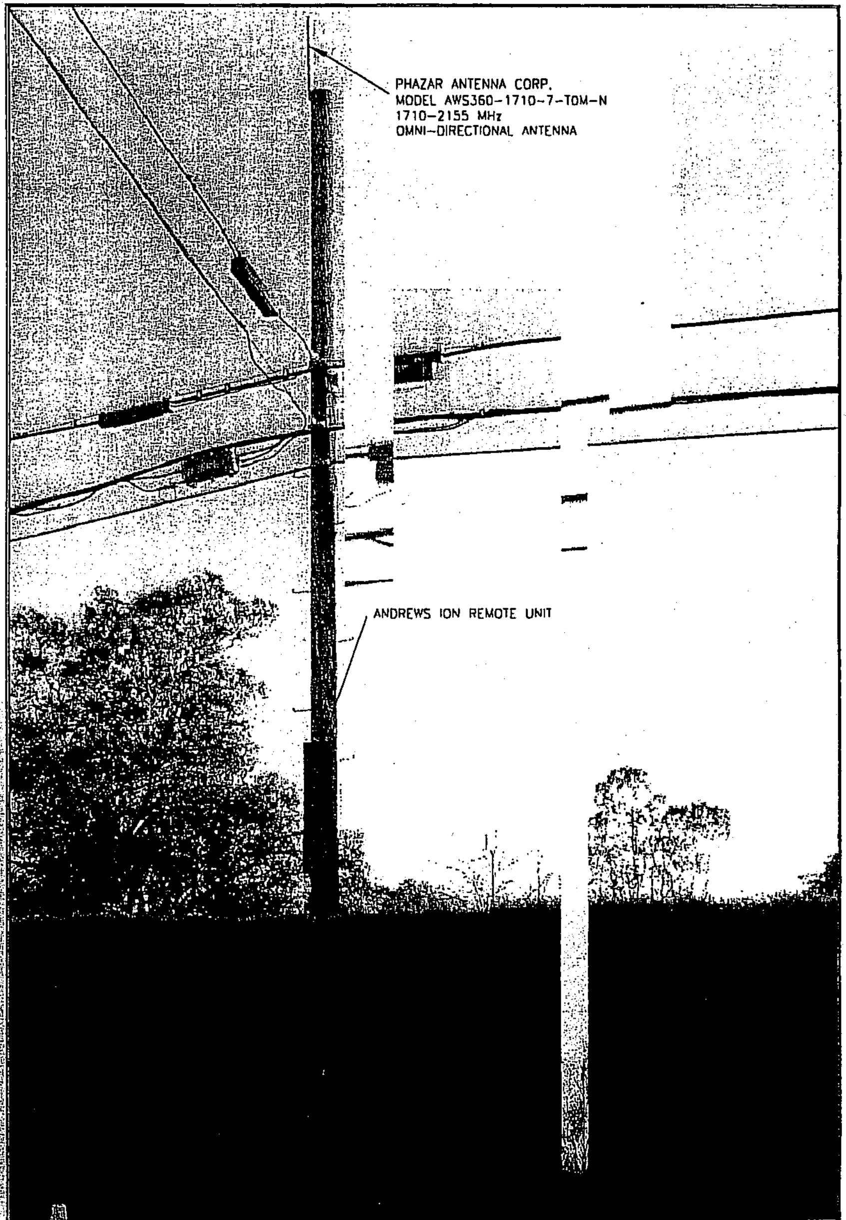
09LUP-00000-00320

Name	Montecito Address
Judith Blankenship	1445 School House Rd.
Theodore Stern	1429 School House Rd.
Donald MacMannis	1435 School House Rd.
John Kelly	1455 School House Rd.
Johanna Lambert	1444 School House Rd.
Gary Meyer	1426 School House Rd.
John Powell	425 Lemon Grove Lane.
Susan Fuhrer	Park Lane

Prepared by Theodore Stern on behalf of all Appellants



EXISTING



PROPOSED

NextG Networks
of California, Inc.

PROJECT INFORMATION:

[illegible]
EAST SANTA BARBARA
SANTA BARBARA, CA [illegible]

CURRENT ISSUE DATE:

01/07/2010

PERMIT SUBMISSION:

REV.:	DATE:	DESCRIPTION:	BY:

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks
of California, Inc.

RCP:

COMMENTS:

SHEET TITLE:

PHOTOSIM

SHEET NUMBER: **1**

REVISION: **1 OF 1**

NextG Networks of California, Inc.

MPC1035CA-ESBN015
EAST SANTA BARBARA
SANTA BARBARA, CA 93108

VICINITY MAP

DIGALERT
1-800-227-2600
CALL AT LEAST TWO DAYS BEFORE YOU DIG
TICKET # _____

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

CODE COMPLIANCE

PROPERTY INFORMATION

CUSTOMER:	NEXTG NETWORKS OF CALIFORNIA, INC.
PROJECT:	EAST SANTA BARBARA
NODE:	MPC1035CA-ESBN015
LATITUDE:	34.43274
LONGITUDE:	-119.83434
STREET ADDRESS:	1449 SCHOOL HOUSE RD
CITY, STATE:	SANTA BARBARA, CA 93108
JURISDICTION:	COUNTY OF SANTA BARBARA
POLE# :	538349
POLE TYPE:	WOOD UTILITY POLE
RAD CENTER / ANTENNA HEIGHT:	29'-11"
ANTENNA TYPE:	AW3360-1710-7-70-V
AZIMUTH FOR ANTENNA:	N/A
POWER TO POLE:	SECONDARY
POLE ACCESS:	ON ROAD
POLE OWNER:	N/A
POLE LOCATION & ACCESSIBILITY:	N/A

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 APPURTENANCES IN ACCORDANCE TO CONSTRUCTION SPECIFICATIONS. REARRANGE ANY EXISTING FACILITIES IN ACCORDANCE TO GOVERNING CONSTRUCTION GUIDELINES.

PROJECT SCOPE

SHEET	DESCRIPTION	REV.
1	TITLE SHEET	1
2	UTILITY NODE / REPEATER POLE COMPOSITE PROFILES	1
3	MAPS	1
4	TYPICALS	1
5	TYPICALS	1

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

NextG Networks of California, Inc.

PROJECT INFORMATION:
MPC1035CA-ESBN015
EAST SANTA BARBARA
SANTA BARBARA, CA 93108

CURRENT ISSUE DATE:
12/28/2009

PERMIT SUBMISSION:

REV.	DATE:	DESCRIPTION:	BY:

PLANS PREPARED BY:
HP COMMUNICATIONS INC.
5730 THORNWOOD DR.
GOLETA, CA 93117
PHONE: (951) 471-1919

PLANS APPROVED BY:
NextG Networks of California, Inc.
REP:

COMMENTS:

SHEET TITLE:
TITLE SHEET

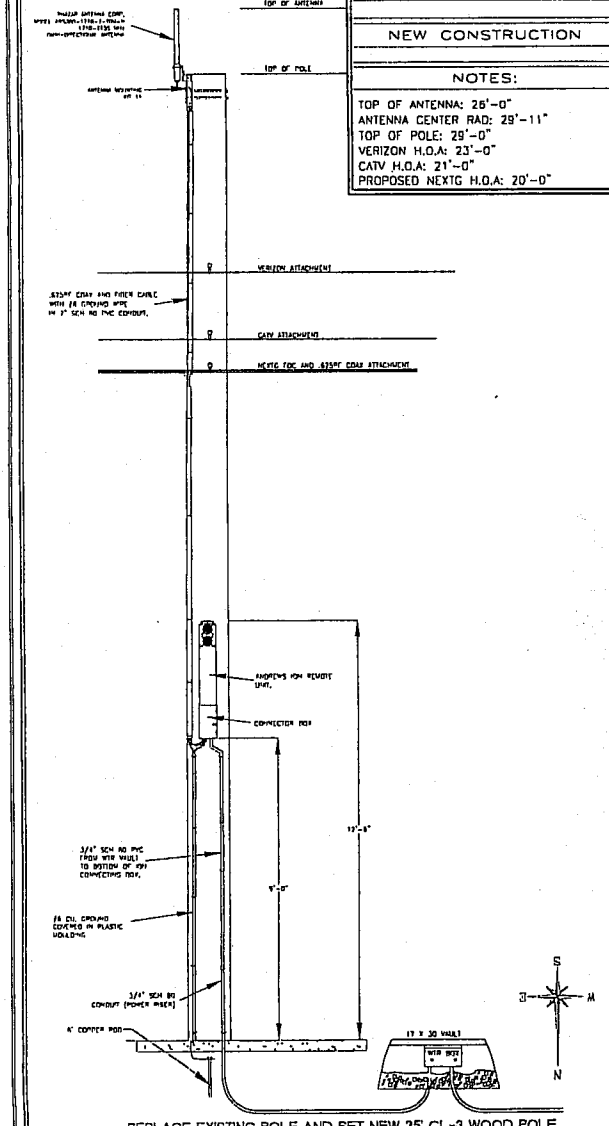
SHEET NUMBER: 1 | REVISION: 1 OF 5

MAKE READY

NEW CONSTRUCTION

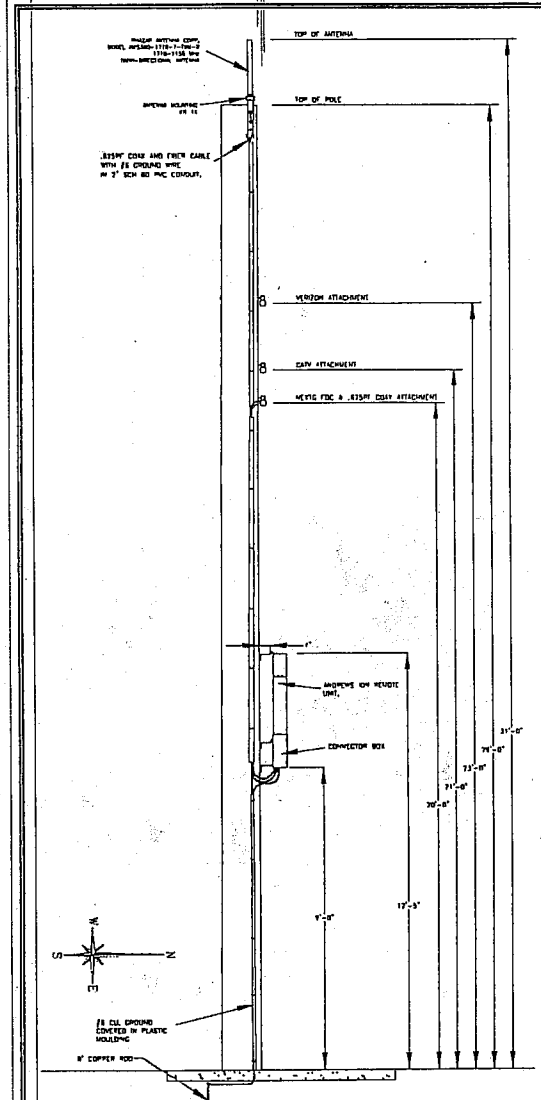
NOTES:

TOP OF ANTENNA: 26'-0"
ANTENNA CENTER RAD: 29'-11"
TOP OF POLE: 29'-0"
VERIZON H.O.A: 23'-0"
CATV H.O.A: 21'-0"
PROPOSED NEXTG H.O.A: 20'-0"



REPLACE EXISTING POLE AND SET NEW 35' CL-3 WOOD POLE

SCALE: N.T.S.	WOOD UTILITY POLE DETAIL ID #S28399	LOOKING SOUTH	A



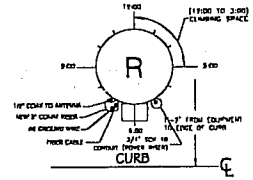
REPLACE EXISTING POLE AND SET NEW 35' CL-3 WOOD POLE

SCALE: N.T.S.	WOOD UTILITY POLE DETAIL ID #S28399	LOOKING WEST	B

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

POLE WILL BE STEPPED IN ACCORDANCE TO GO95 STANDARDS IN RESPECT TO CLIMBING SPACE.

1-2" NEXTG RISER @ 7:00
1-3/4" POWER RISER @ 5:00



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 of California, Inc.

PROJECT INFORMATION:

NPC1035CA-230M01E
EAST SANTA BARBARA
SANTA BARBARA, CA 93108

CURRENT ISSUE DATE:

12/28/2009

PERMIT SUBMISSION:

REV.	DATE:	DESCRIPTION:	BY:

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks of California, Inc.

REP:

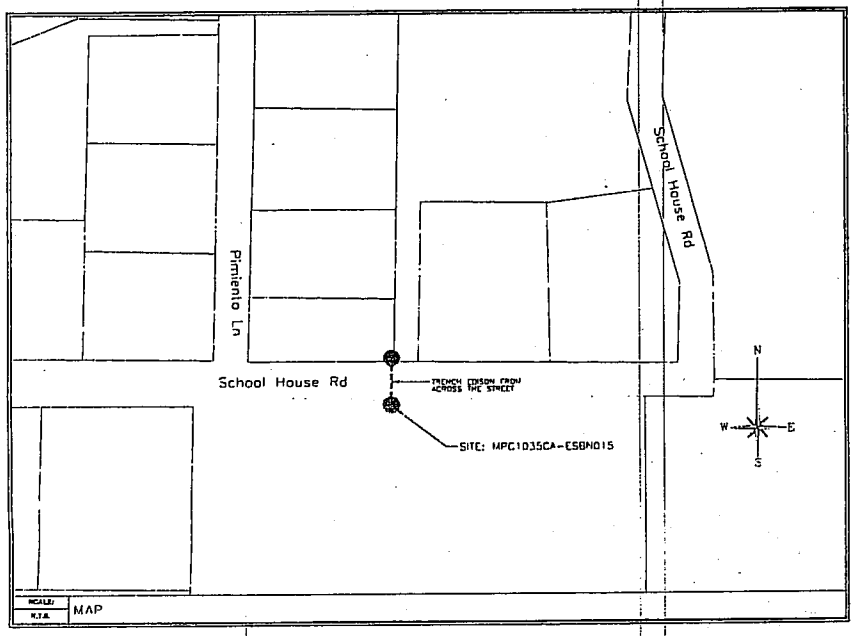
COMMENTS:

SHEET TITLE:

PROFILES

SHEET NUMBER: 2 REVISION: 2 OF 5

SCALE: N.T.S. MAP



SCALE: N.T.S. MAP

NextG Networks of California, Inc.
3720 Thornwood Dr
Goleta, CA 93117
Phone: (805) 964-1500

PROJECT INFORMATION:

MPC1035CA-ESBN015
EAST SANTA BARBARA
SANTA BARBARA, CA 93108

CURRENT ISSUE DATE:

12/28/2009

PERMIT SUBMISSION:

REV.	DATE:	DESCRIPTION:	BY:

PLANS PREPARED BY:

HP COMMUNICATIONS INC.
3720 THORNWOOD DR.
GOLETA, CA 93117
PHONE: (831) 471-1819

PLANS APPROVED BY:

NextG Networks of California, Inc.

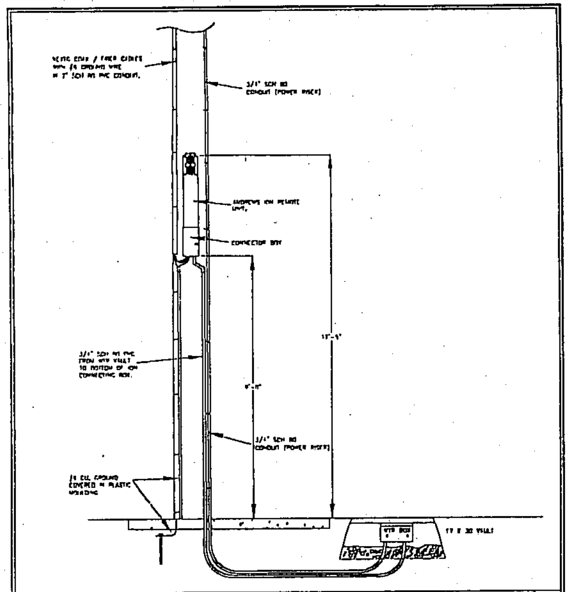
RCP:

COMMENTS:

SHEET TITLE:

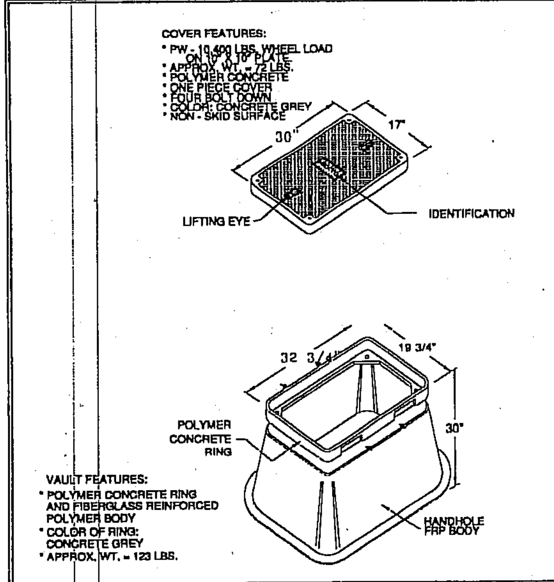
MAP

SHEET NUMBER: 3 REVISION: 3 OF 5



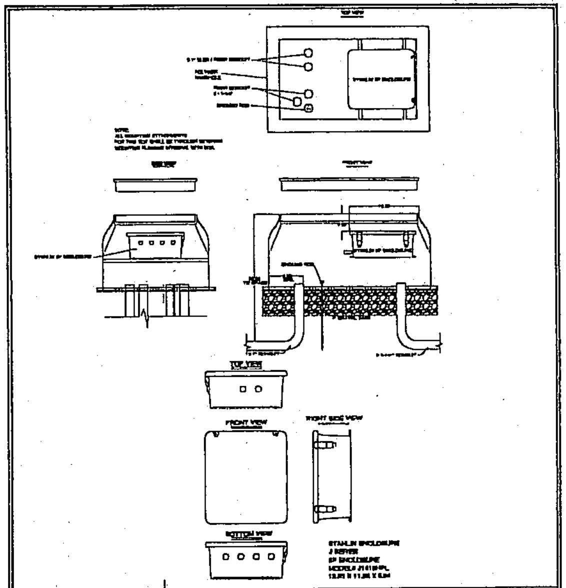
REPEATER EQUIPMENT AMD MOUNTING CHASIS CONFIGURATION | A

SCALE: N.T.S.



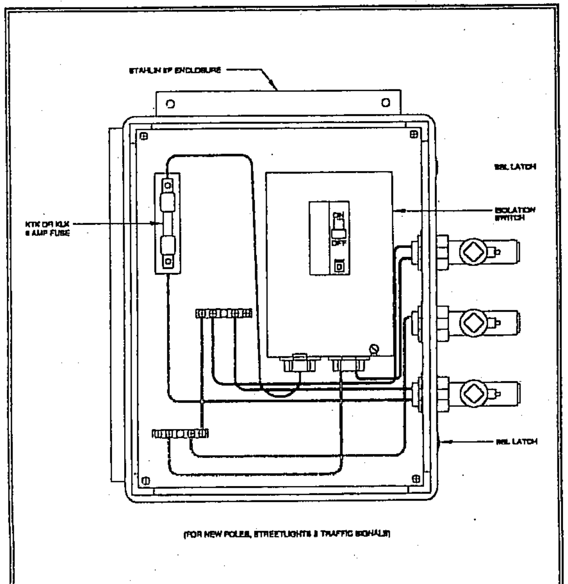
17" X 30" CONNECTOR HANDHOLE | B

SCALE: N.T.S.



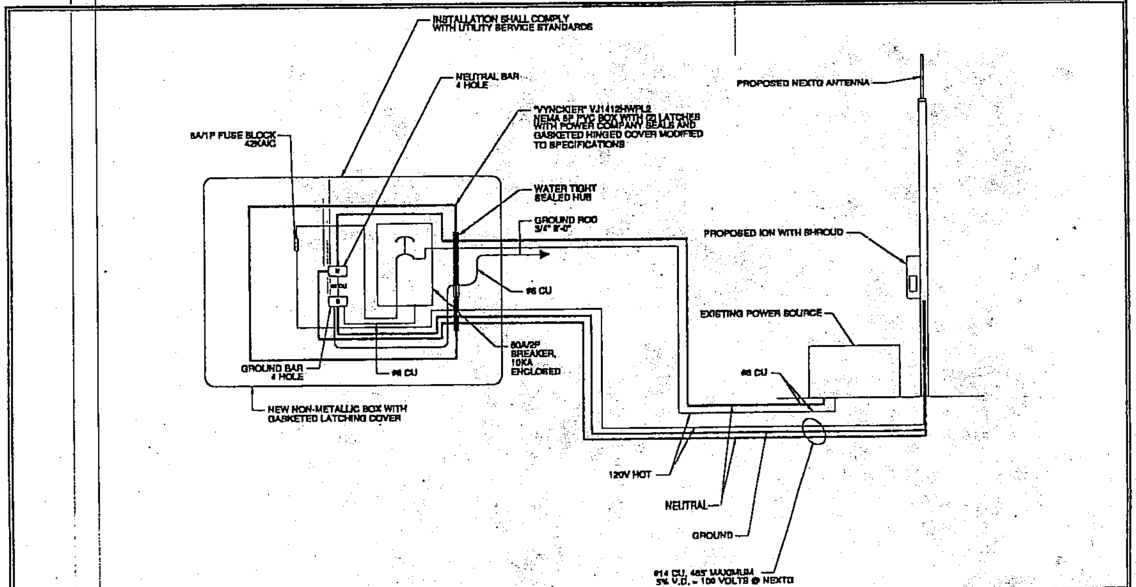
STAHLIN 6P ENCLOSURE (WTR BOX) | C

SCALE: N.T.S.



WTR FUSE BOX | D

SCALE: N.T.S.



POWER SINGLE LINE DIAGRAM | E

SCALE: N.T.S.

NextG Networks of California, Inc.

PROJECT INFORMATION:

EAST SANTA BARBARA
SANTA BARBARA, CA 93106

CURRENT ISSUE DATE:

12/28/2009

PERMIT SUBMISSION:

REV.:	DATE:	DESCRIPTION:	BY:

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks of California, Inc.

REP:

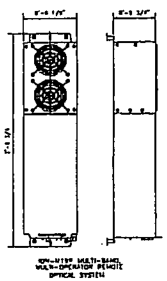
COMMENTS:

SHEET TITLE:

TYPICALS PAGE 1

SHEET NUMBER: 4

REVISION: 4 OF 5



REPEATER EQUIPMENT DIMENSIONS

SCALE: N.T.S. | F

Phazar Antenna Corp.

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

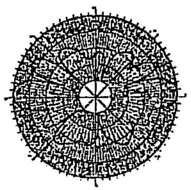
MODEL AWS360-1710-7-TD-N

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	15°±1° (NOMINAL)
HORIZONTAL-3dB BEAMWIDTH	360°
AZIMUTH RIPPLE	±.5 dB
ELECTRICAL DOWNTILT	2 AND 4° (T2 AND T4 FOR PART NUMBER)

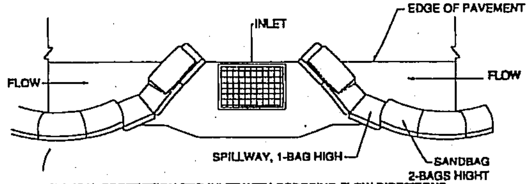
MECHANICAL & ENVIRONMENTAL SPECIFICATIONS:

CONNECTOR	TYPE "N" MALE OR 7/16 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	170 MPH
LIGHTNING PROTECTION	DIRECT GROUND

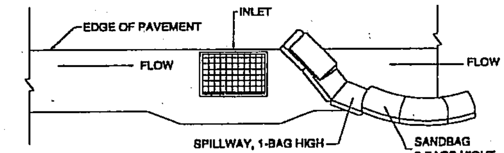


ANTENNA SPECIFICATIONS

SCALE: N.T.S. | G



TYPICAL PROTECTION FOR INLET WITH OPPOSING FLOW DIRECTIONS



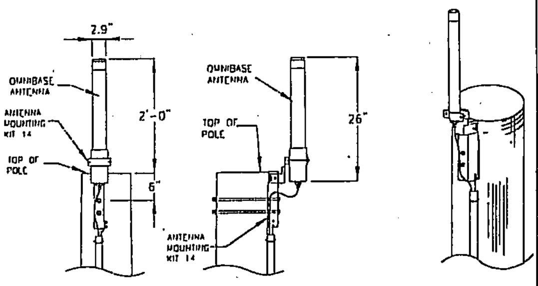
TYPICAL PROTECXTION FOR INLET WITH SINGLE FLOW DIRECTION

NOTES:

1. INTENDED FOR SHORT-TERM USE.
2. USE TO INHIBIT NON-STORM WATER FLOW.
3. ALLOW FOR PROPER MAINTENANCE AND CLEANUP.
4. BAGS MUST BE REMOVED AFTER ADJACENT OPERATION IS COMPLETED.
5. NOT APPLICABLE IN AREAS WITH HIGH SILTS AND CLAYS WITHOUT FILTER FABRIC.

STORM DRAIN INLET PROTECTION

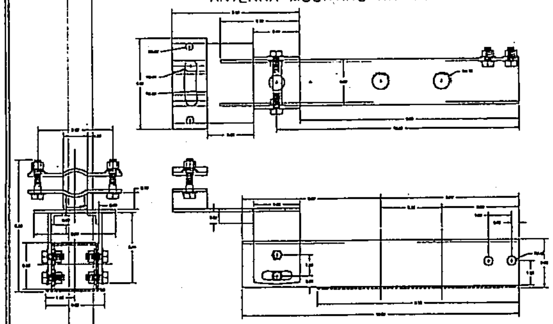
SCALE: N.T.S. | H



ANTENNA MOUNTING CONFIGURATION

SCALE: N.T.S. | I

ANTENNA MOUNTING KIT 14



ANTENNA MOUNTING KIT 14

SCALE: N.T.S. | J

NextG Networks of California, Inc.

PROJECT INFORMATION:

MPC1035CA-ESRND18
EAST SANTA BARBARA
SANTA BARBARA, CA 93108

CURRENT ISSUE DATE:

12/28/2009

PERMIT SUBMISSION:

REV.:	DATE:	DESCRIPTION:	BY:

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks of California, Inc.

REP:

COMMENTS:

SHEET TITLE:

TYPICALS PAGE 2

SHEET NUMBER: | REVISION:

5 | 5 OF 5

Villalobos, David

From:	Jeannine Cox [jnine1@cox.net]
Sent:	Friday, April 23, 2010 5:23 PM
To:	Villalobos, David
Subject:	cell antennas in Montecito
Categories:	Blue Category

AGENDA ITEMS

ITEM #: 3

MEETING DATE: 4-28-10

April 23, 2010

Montecito Planning Commission

I am writing to express my extreme concern about NextGís plan to install wirelesscellular antennas next to our homes and schools in Montecito.

These cell antennas represent a real and significant threat to our communities on multiple fronts, aesthetics, property values, and health being but three of the mostimportant.

Currently, the County Ordinance allows cell antenna installations next to homes andschools without any neighborhood oversight or control. Indeed, some antennas have already been installed within Public Utility Easements on homeownersí propertieswith no notification to the homeowner and without their consent. Because these antennas and related equipment represent a visual blight and raise serious health concerns, it has been conclusively shown that the presence of a cell antenna on or near aproperty can reduce that propertyís value by 15% or more. Thus, I strongly believe thatcell antennas need to be sited very carefully to protect the best interests of the community, and that residents should have the right to determine whether a cell tower or antenna is installed on their property.

I am aware that the applications submitted by NextG to install cell antennas throughout our county represent but the first wave of such installations. Should NextG be permittedunfettered license to install antennas wherever they see fit, it will inevitably open thedoor to other companies who wish to do the same thing. This means that we could soon be seeing these antennas going up on literally any and all utility poles throughout ourcounty, and we, the residents, will have absolutely no say in the matter.

This kind of antenna proliferation would drastically change the way our streets and neighborhoods look and feel, and to allow it is tantamount to permitting outside corporate control over community property values and aesthetics. The County has the right and duty to regulate installations of this kind based on aesthetics and protection of property value.

I beseech the Board to act NOW, before it is too late. Please vote to deny NextGíspermits and their appeal on March 16th, 2010.

Signed: _Jeannine Cox 145 La Vereda Road, 93108_____

Date: April 23, 2010_____

RECEIVED

APR 26 2010

S.B. COUNTY
PLANNING & DEVELOPMENT
HEARING SUPPORT

NextG Networks

EMPOWERING NEXT GENERATION WIRELESS NETWORKS

Corporate Headquarters:

NextG Networks, Inc.
2216 O'Toole Ave.
San José, California 95131

Tel: (408) 954-1580
Fax: (408) 383-5397
Web: www.nextgnetworks.net

Writer's Address:

Patrick S. Ryan
NextG Networks, Inc.
1444 Blake Street
Denver, Colorado 80202

Tel: (303) 835-3574
Fax: (303) 265-9737
Email: pryan@nextgnetworks.net

April 26, 2010

AGENDA ITEMS

ITEM #: 3

MEETING DATE: 4-28-10

VIA EMAIL AND HAND DELIVERY

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 NextG Land Use Permit 09LUP-00000-00320

Dear Chair Phillips and Commissioners:

On March 10, 2010 the Planning and Development Department ("P&D") issued its notice and intent to approve several NextG land use and coastal development permits. On March 22, 2010, one of those permits was appealed by a group of individuals (collectively "Appellants") to the Montecito Planning Commission (the "Commission"). Specifically, the current appeal involves Land Use Permit No. 09LUP-00000-00320. NextG learned by letter dated April 15, 2010 that the Commission has granted a hearing on the appeal at the Commission meeting on April 28, 2010. NextG intends to attend the April 28, 2010 hearing and oppose the appeal. In advance and for the record, NextG submits the following substantive response to the arguments raised in the appeal.[1]

Appellants' appeal and objections to the approval of this permit is unsupported by both the facts and the law. The P&D decision to issue NextG this Land Use Permit was well-considered, complete, and in fact is the only lawful result under the Santa Barbara County Code, the Montecito Land Use and Development Code, California State law, and Federal law.

NextG's Applications Satisfy All Standards And Criteria For Approval

[1] NextG notes that the Santa Barbara Board has recused the Commission from consideration of an earlier-filed appeal of NextG installations substantially similar to this present appeal. To the extent that the grounds for recusal of the Commission in the prior action are applicable here, the Commission should be recused from acting on this appeal.

RECEIVED
APR 26 2010
S.B. COUNTY
PLANNING & DEVELOPMENT
HEARING SUPPORT

The application at issue here is for the installation of a single, very small wireless telecommunications antenna and associated equipment on an existing utility pole in the public rights of way. NextG's antenna and equipment is in fact smaller and less intrusive than many other utility and communications attachments to the same and surrounding utility poles - a fact admitted by the Appellants. As demonstrated by the photograph and photosimulation that accompany NextG's initial application (Exhibit 1 hereto), NextG's facilities present an extremely low visual impact, blending into the already existing utility right of way facilities. There are already at least two other utilities attached to these poles, and approximately four fiber splice equipment enclosures on the strands, each of which is larger than NextG's antenna.

The County and Montecito have already determined in their ordinance that "very small facilities" precisely like NextG's are the least intrusive means of closing gaps in wireless coverage. As discussed below, the County and Montecito have adopted Code provisions that recognize that facilities that are the size of NextG's, installed on utility poles in the public right of way, are most favored options for installing wireless telecommunications facilities because they will have no adverse impact. Having reached that conclusion and created a process to promote the deployment of such facilities, the Planning Commission cannot now deny NextG's application.

Specifically, the MLUDC sets forth standards and processes by which wireless telecommunications facilities may be permitted within Montecito. The purpose of these standards and processes is to promote the orderly development of commercial telecommunications facilities and ensure compatibility with surrounding land uses. MLUDC § 35.444.010.A. MLUDC § 35.444.0010.C establishes what types and sizes of commercial telecommunications facilities are compatible with surrounding land uses, and set forth processing requirements to permit those facilities.

The permit at issue here would authorize a single distinct "node" installation on an existing utility pole in Montecito within Santa Barbara County. The node consists of a singular omnidirectional "whip" (or stick) antenna that is approximately twenty-four inches long and one inch in diameter and equipment that is approximately thirty-three inches long, six inches wide, and six inches deep, both of which will be attached to an existing utility pole in the public right of way. The node, along with associated fiber optic lines, will enable NextG to provide telecommunications services, specifically RF transport services, to licensed wireless telecommunications providers and other large users of telecommunications.[2]

Accordingly, NextG's node at issue here falls under the definitions of "Telecommunications Facility" and "Wireless Telecommunications Facility" set forth in

[2] Consistent with the County's permitting practice and permitting exemptions, the fiber-optic lines have, for the most part, already been installed through the Community, and are not subject to any appeal.

the MLUDC,[3] and thus are subject to the permit requirements, and siting and development standards established in the MLUDC.

MLUDC § 35.444.010.C outlines a multi-level, tiered system for considering and permitting commercial telecommunications facilities. As the size and intrusiveness of the proposed facilities increase, so too does the applicable tier, applying progressively more stringent siting restrictions and approval requirements. For example Tier 1 projects are categorized as "very small facilities" under the code require only ministerial approval of a Land Use or Coastal Development Permit, while Tier 4 projects require a Major Conditional Use Permit, approval of which requires a more extensive application process and public hearings. MLUDC § 35.44.010, Table 4-10.

Under the MLUDC, commercial telecommunications facilities, like each of NextG's proposed nodes, are permitted in all zones as Tier 1 commercial facilities, requiring only a ministerial grant of a Land Use Permit if they are wireless telecommunications facilities that comply with the following:

> (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.
>
> (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

---

[3] MLUDC Section 35.500.010 defines "Telecommunications Facility" as:

> A facility that transmits or receives electromagnetic signals for communication purposes including data transfer. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; equipment buildings; parking areas; and other accessory development. It does not include facilities staffed with other than occasional maintenance and installation personnel or broadcast studios.

Likewise, MLUDC Section 35.500.010 defines "Wireless Telecommunications Facility" as:

> A commercial facility that transmits and/or receives radio communication signals through the air for cellular, personal communication services, pagers, and/or similar services. The facility may include: antennas, radio transmitters, equipment shelter or cabinet, air vents, antenna support structure, air conditioning unites, fire suppression systems, and emergency back-up generators including fuel storage.

that there will not be a negative visual impact. 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.

(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.

MLUDC § 35.444.010.C.1.

There is no dispute in this case that NextG's node consists of a single omnidirectional antenna and associated equipment that is approximately 1,212 cubic inches - or approximately 500 cubic inches less than one cubic foot. The node includes only one antenna, and is to be mounted on an existing operational public utility pole, that based upon P&D's original approval is not being considered for removal. The antenna will be attached to the pole in such a fashion that it does not extend beyond the top of the pole - indeed even if it did extend beyond the top of the pole the antenna wouldn't be long enough to extend more than 40 inches above the pole. Clearly, P&D correctly determined that NextG's proposed node complies with the Tier 1 standard, and is permitted facilities subject only to Land Use and Coastal Development Permits.

The Appellants argue, in passing and without explanation or support, that NextG's node installations in Montecito should be treated not as individual installations under the Tier 1 process, but collectively as a group under the Tier 4 framework. The Appellants'' argument is meritless. The MLUDC establishes that the Tier 4 permitting standards are applicable to:

a. Wireless telecommunication facilities *that may not be permitted in compliance with [any other processing standard or tier]* but do comply with the following development standards...

(1) The height of the antenna and associated antenna support structures shall not exceed 75 feet.

(2) The base of a new freestanding antenna support structure shall be set back from a lot with a residential zone designation a distance equal to five times the height of the antenna and antenna support structure, or 300 feet, whichever is greater.

(3) If the facility is proposed to be located on a lot with a residential zone designation as identified in Section 35.404.020 (Zoning Map and Zones), or on a lot with a Recreation (REC)

zone designation, or does not comply with Subsection 4.a.(2) above, the Montecito Commission, in order to approve a Conditional Use Permit, shall also find that the area proposed to be served by the telecommunications facility would otherwise not be served by the carrier proposing the facility.

b. Other telecommunication facilities as follows are allowed in nonresidential zones as identified in Section 35.404.020 (Zoning Map and Zones):

(1) Facilities that are subject to regulation by the Federal Communications Commission or the California Public Utilities (e.g., AM/FM radio stations, television stations). Such facilities may include: equipment shelters, antennas, antenna support structures, and other appurtenant equipment related to communication facilities for the transmission or reception of radio, television, and communication signals.

(2) Other commercial telecommunication facilities that exceed 50 feet in height.

These do not include wireless telecommunication facilities that are subject to the provisions of C.4.a. above, or amateur radio facilities that are subject to the provisions of Section 35.444.020 (Noncommercial Telecommunication Facilities).

MLUDC § 35.444.010.C.4 (emphasis added). The plain language of the Code makes clear that Tier 4 is not the applicable standard for wireless telecommunication facilities that may be permitted under any other processing tier. Because NextG's Nodes fall squarely within the definition of Tier 1, they cannot be Tier 4.

Upon deeper investigation into the Tier 4 standard, it is clear that the description of facilities to which Tier 4 processing applies does not remotely resemble NextG's proposed nodes. Tier 4 clearly contemplates large, freestanding structures like traditional cell towers or monopoles. NextG's small omnidirectional antennas and equipment attached to existing public utility poles in the public rights-of-way are nothing like the larger freestanding support structures Tier 4 encompasses. Based on the language and specifications in the MLUDC for Tier 4 permitting, it is nonsensical to even attempt to apply Tier 4 standards to the collective facilities in question.

The argument that Tier 4 is the appropriate standard for the two node sites at issue is illogical and indefensible based on NextG's equipment specifications, which are undisputed, and the plain language of the MLUDC. Nothing in MLUDC § 35.444.010 contemplates treating multiple interconnected installations under a collective permitting process, nor does the MLUDC grant the Commission the authority to make such a decision. As explained above, each individual node clearly meets the Tier 1 standard for approval.

Moreover, when NextG first approached P&D about the permitting process in 2004 and 2005, and then specifically with the current project in early 2009, the various permitting processes under the MLUDC were discussed. The requirements of the codes were considered and P&D determined that under the requirements of the MLUDC each individual installation would require a permit, but that the network as a whole was governed by Section 7901 of the California Public Utilities Code and Sections 253 and 332 of the Federal Telecommunications Act (47 U.S.C. § 253; 47 U.S.C. § 332). The Appellants' arguments ignore local, state, and federal laws governing NextG's network, and this application in particular.

NextG's Facilities Meet All Other Applicable Tier 1 Requirements

As explained above, NextG's node facilities comply with and should be considered under the Tier 1 standard. Moreover, as the P&D staff correctly found, NextG's facilities also meet all the other development standards applicable to "Commercial Telecommunications Facilities" as outlined in MLUDC § 35.444.010.D.

The Appellants assert, without support, that the facilities "are not adequately setback from habitable structures." The proposed node facilities are all to be located on an existing, operating public utility pole. As a consequence, NextG's proposed nodes need not comply with any setback requirements. *See* MLUDC § 35.444.011.D.1.a. To the extent that the Appellants" assertion is a veiled objection to potential RF emissions, it is not grounds for denying NextG's permits. 47 U.S.C. § 332(c)(7)(B)(iv). Also by virtue of being attached to an existing utility pole, and not extending past the top of the pole, NextG's facilities will comply with all zoning height requirements and will be installed at a height above the ~~reach of~~ the general public, and thus in compliance with MLUDC § 35.444.010.D.1.b, c, & d. There is no basis to require more of a setback for the facility in question than the current setback that exists throughout Montecito for all utility poles and thus MLUDC § 35.444.011.D.1.a explicitly exempts antennas on utility poles from set back requirements.

Similarly, because NextG's facilities will be attached to an existing utility pole, no ~~new structures will be constructed that would require any ground disturbing activity.~~ Therefore, the node will not disturb existing vegetation, environmentally sensitive areas, or prime agricultural soils, in compliance with MLUDC § 35.444.010.D.1.l & D.2.b, e, & f.

None of the facilities at issue here are located in or on a designated historical landmark, and thus are in compliance with MLUDC § 35.444.010.D.1.e. NextG submitted a radiofrequency emissions report with its applications. The report, by Jerrold Bushberg, Ph.D. dated April 29, 2009 establishes that the proposed facility will meet the FCC's emissions requirements, as required by MLUDC § 35.444.010.D.1.f. The proposed facility is to be located in the public rights-of-way, thus, in compliance with MLUDC § 35.444.010.D.1.g, there are already roads available to access the facility, and any temporary parking necessary will be provided by existing public parking in the surrounding areas. NextG's facility does not include any lights or lighting, therefore it complies with MLUDC

§ 35.444.010.D.1.h. The proposed facility is not located within an airport safety zone. MLUDC § 35.444.010.D.1.i. NextG's node is proposed to be painted with non-reflective brown paint to match the pole to which it is attached. *See* MLUDC § 35.444.010.D.1.j & k. NextG's node will all derive its electric power from Southern California Edison on the utility pole to which it is attached. NextG does not propose any new utility conduits or back-up generators to supply power to its facility in compliance with MLUDC § 35.444.010.D.2.a.

NextG's proposed node is exempt from the requirements of MLUDC § 35.444.010.D.2.d. NextG's proposed facility does not include any "support facilities" identified by those sections. Those provisions refer to large intrusive and cumbersome support facilities such as vaults, equipment rooms, utilities, equipment enclosures. *See* MLUDC § 35.444.010.D.2.d. NextG's facility consists of an antenna and its associated equipment which, under Tier 1, is classified as "very small facilities" with a total volume of approximately 1,212 cubic inches – or approximately 500 cubic inches less than the one cubic foot of antenna and associated equipment allowed under Tier 1. *See* MLUDC § 35.444.010.C.1.a.1. Furthermore, not undergrounding NextG's proposed facility eliminates the potential for harmful ground disturbing activities since NextG's facility may be attached to and blend in with an operational utility pole. Moreover even if MLUDC § 35.444.010.D.2.d were somehow applicable to NextG's proposed node, it is obviously not technically feasible to underground NextG's antenna and still provide service. Therefore, any such requirement would effectively prohibit NextG's deployment of its telecommunications facilities in violation of Sections 253 and 332 of the Telecommunications Act of 1996. 47 U.S.C. §§ 253 & 332(c)(7).

NextG's proposed facility is in compliance with the development standards established by MLUDC § 35.444.010.D.3. Specifically, the singular whip antenna that is approximately 24 inches long and its associated facilities which are similarly small in stature are designed to blend in with the surrounding environment and be minimally visible. Indeed, they are to be mounted on an existing, occupied public utility pole that is amongst surrounding trees and the surrounding developments, including other existing on-pole utility boxes, cables, and transformers. Additionally, the facility will be painted brown to blend in with the pole to which it is attached and because they are narrower than the pole itself will not extend past the profile of the pole. All of these precautions ensure that the facility will be minimally visually intrusive and in compliance with MLUDC § 35.444.010.D.3.

Finally, NextG has satisfied all relevant requirements under the California Environmental Quality Act ("CEQA"). The California Public Utilities Commission ("CPUC") is the only entity with broad discretionary decision-making authority over NextG's proposed services, facilities and construction through the state, and as such, is the lead agency. Cal. Code Regs. tit. 14, § 1505(b). As lead agency, the CPUC's CEQA determinations are "final and conclusive," except under certain exceptional circumstances, and binding on all parties. *Id*, §§ 15050, 15162. The CPUC published a Notice of Exemption through the CEQA clearinghouse, and no party has challenged it. A copy of

the Notice to Proceed that was issued by the CPUC on July 14, 2009, as well as the Notice of Exemption that was published by the CPUC, is attached.

NextG Is Not Required To Establish That A Gap In Service Exists Or Eliminate Potential Alternative Sites

Appellants argue that NextG has not established that there is a gap in service that needs to be filled or gone through an analysis of potential alternatives. However, there is no requirement in the MLUDC or any other County Code requiring that NextG establish such a gap or demonstrate the lack of alternatives, and Appellants cite no such requirement. Accordingly, it cannot be grounds for denial of NextG's permits.

Indeed, the County and the Commission are prohibited from denying NextG access to the public rights of way based on alleged potential alternative locations, and NextG is not required to demonstrate a gap in service that creates a need for the deployment. Public Utilities Code § 7901 grants NextG a state-wide franchise to occupy the public rights of way that cannot be denied. In particular, it cannot be denied based on the assertion that there may be alternative locations for NextG to use, and NextG is not required to establish any "gap in service" that requires its deployment. Pursuant to California law, NextG is a "telephone corporation" that constructs "telephone lines." Section 7901 of the California Public Utilities Code grants "telephone corporations" an absolute right to deploy their "telephone lines" in the public rights of way throughout the state. The Public Utilities Code defines "telephone lines" to include "all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wire." Cal. Pub. Util. Code § 233. Accordingly, the California Legislature has decided that installation of telephone lines, such as NextG's equipment, on utility poles in the public rights of way is a compatible with the use and location of public utility poles generally.

The Montecito Overhead Utility Policy Is Not Grounds For Denial

Appellants argue that the Montecito Association adopted an "Overhead Utility Policy," that is meant to promote a policy of undergrounding utilities in Montecito. Appellants point to this as a demonstration of their community commitment to aesthetics. However, this is not a reason that P&D can deny NextG's Land Use Permit. In addition to the fact that federal and state laws prohibit Montecito from discriminating against NextG by prohibiting it from attaching to existing utility poles where other telephone corporations are allowed to attach, a wholesale undergrounding requirement is not in any of the applicable local Codes or ordinances. Thus, P&D could not make a permitting decision based on a desired goal of undergrounding all utilities.

Indeed, the establishment of an underground district is a formal process that is far beyond a community's desire – even if a written desire by the Association – and requires that funds be allocated pursuant to the process set forth by the California Public Utilities

Commission ("CPUC") in Case No. 8209 (Sep. 19, 1967). Essentially, under the applicable CPUC tariffs and rules that apply, Southern California Edison (under Rule 20) and AT&T (under Rule 32) must be participants. Additionally, an official Underground Utility District ("UUD") must be formed, and a UUD can *only* be formed after consultation with the affected utilities and after a public hearing to establish the project. Santa Barbara Code of Ordinances ("SBCCO") at Section 34-2. In the case of the County of Santa Barbara, the Board of Supervisors has established an Underground Utilities Committee, consisting of more than 24 members, which meets on these issues. The pole in question is not subject to any approved UUD nor is it formally scheduled for any public hearing for consideration as such.

Appellants seek to avoid this hurdle by arguing that they believe that at some unspecified point in the future a pole to which NextG has been permitted to attach may be recommended for removal in favor of undergrounding utilities, and further, that the Code section voiding any permits for such a pole might not be complied with, or will be struck down as unlawful. Appellants are actually proposing that P&D should make its decisions based on the potential that the Code under which it operates, and is bound by, might not be complied with or upheld as lawful in the future. Assuredly, regardless of Appellant's uncertainty with the validity or operability of the Code as it is, neither P&D nor this Commission can act contrary to the Code, while it is still in effect. Yet, if the County were to take this action based on the desire to underground in the future, it would completely usurp its own code since there has been no public hearing to designate the area in question as a UUD according to SBCCO Section 3-2.

NextG's Facilities Will Be Compatible With The Existing Above Ground Right Of Way Infrastructure

Appellants readily admit that the pole where NextG's Node will be located already has utility infrastructure attached to it, and that the other utility poles in the area likewise contain overhead equipment and lines. There is no evidence, and there could be no evidence, that NextG's very small antenna and equipment box will not be compatible with the existing right of way infrastructure.

P&D's consideration of those very facts is enough to support their finding that the facilities at issue here are compatible with the existing and surrounding development, and located to minimize its visibility from public view. Moreover, as addressed above, to the extent Appellant's complaint is really about the type of facilities NextG is installing, their objection is preempted by state and federal law. Under Section 7901 of the California Public Utilities Code, NextG has a statewide franchise to construct its equipment "to facilitate communication by telephone," in the public rights of way, and thus they are a compatible use in the public rights of way. P&D, and now this Commission, do NOT have the option, suggested by Appellants, of finding that "no project" is an appropriate "alternative." NextG has an absolute right to deploy its facilities in the public rights of way that cannot be denied.

Also as noted above, under Section 7901.1 of the Public Utilities Code, regulations governing right of way deployment must treat all entities equally. Thus, the Commission cannot deny NextG the right to install its equipment on an existing utility pole where all other telephone and utility companies have already been allowed to do so.

Conclusion

Appellants have introduced no evidence demonstrating that NextG's single node at issue in this case was not properly granted as a Tier 1 small wireless telecommunications facility. The MLUDC, Section 7901 of the California Public Utilities Code, and Section 253 of the federal Communications Act all require that NextG's permit be granted. Accordingly, the appeal should be denied.

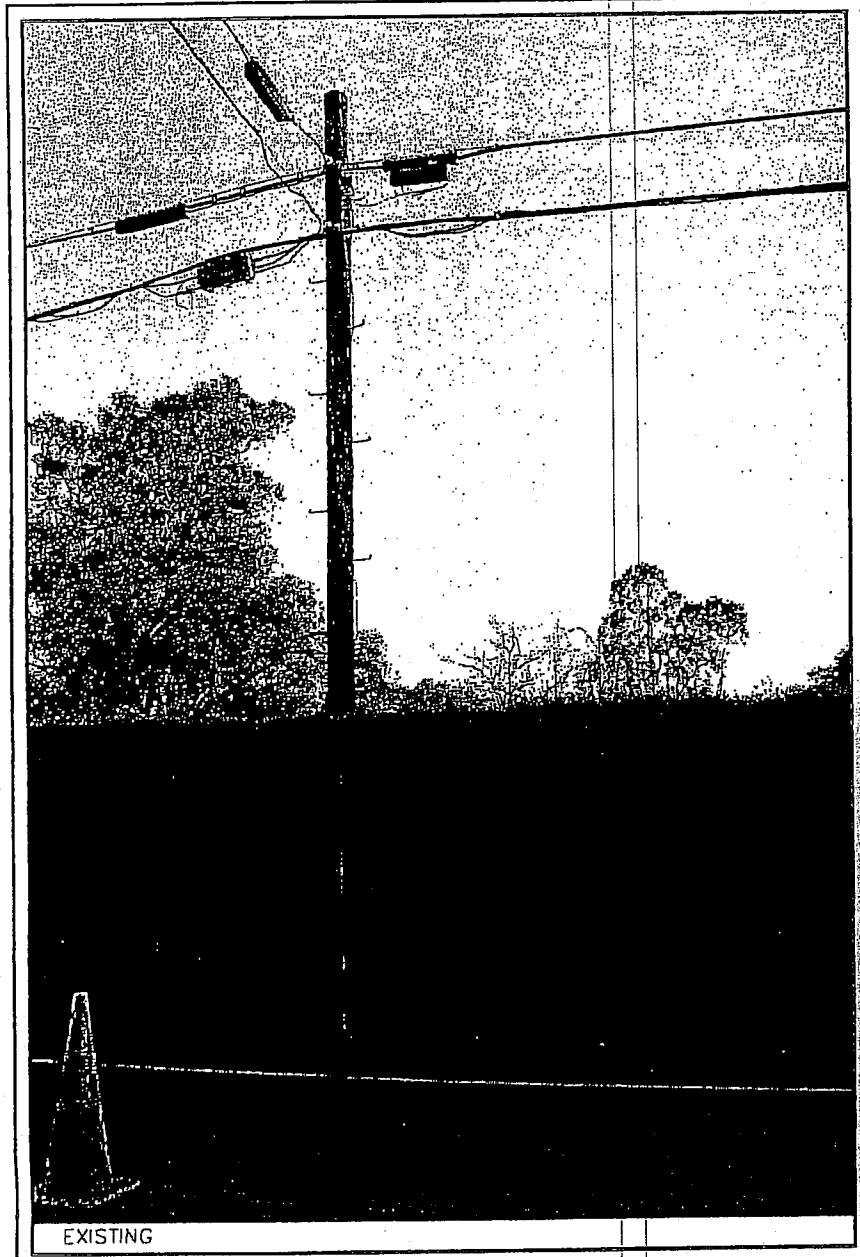
Very truly yours,

Patrick S. Ryan
VP of Government Relations & Regulatory Affairs

cc: Megan Lowery (County of Santa Barbara – *for case file*) (by email)
Judith Blankenship (Appellant) (by email)
Theodore Stern (Co-Appellant) (by email)
Sharon James (NextG)
T. Scott Thompson (Davis, Wright & Tremaine)

Enclosures:

1. Photograph of site and Photosimulation



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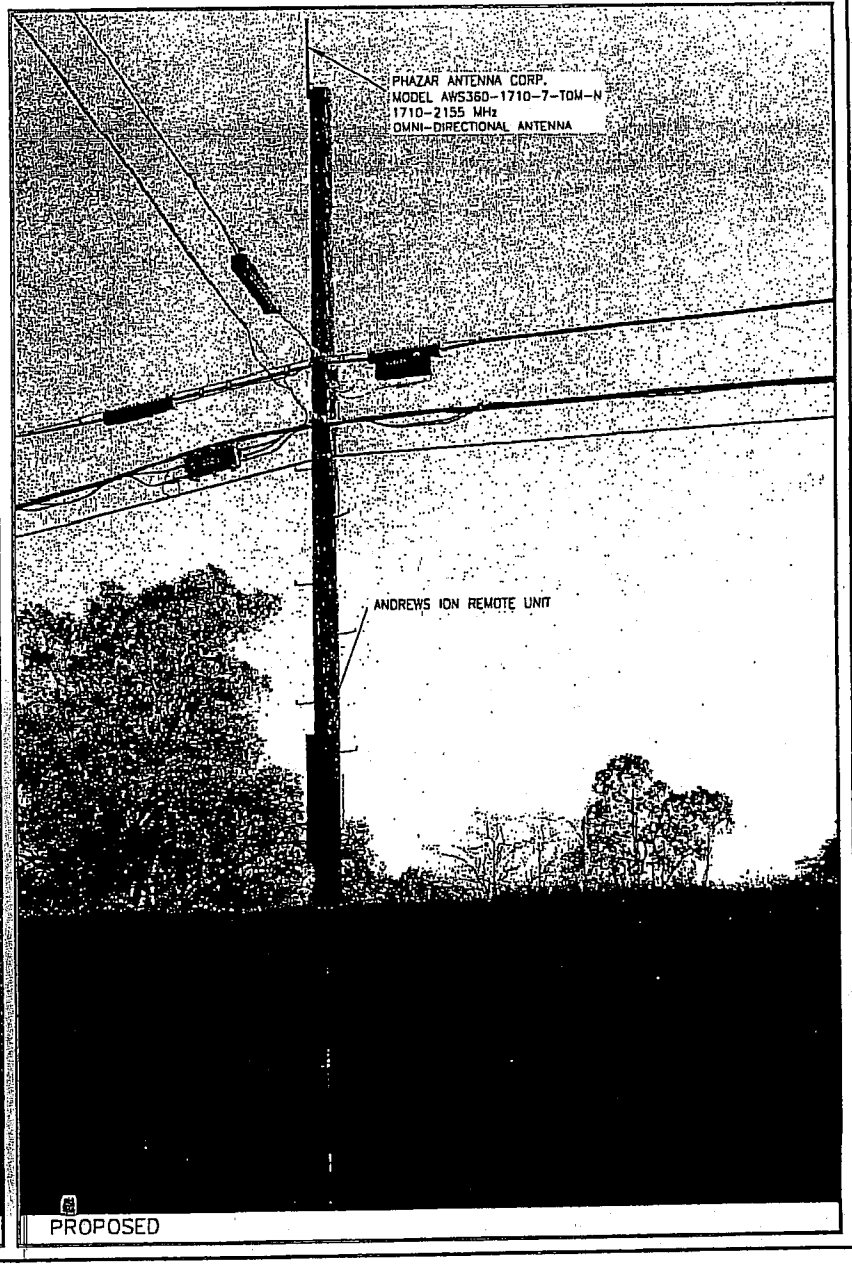

PROPOSED

NextG Networks of California, Inc.

PROJECT INFORMATION:

[redacted]
SANTA BARBARA, CA 93108

CURRENT ISSUE DATE:

01/07/2010

PERMIT SUBMISSION:

REV.	DATE:	DESCRIPTION:	BY:

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

[redacted]

PLANS APPROVED BY:

NextG Networks of California, Inc.

REF:

COMMENTS:

SHEET TITLE:

PHOTOSIM

SHEET NUMBER: 1 | REVISION: 1 OF 1

Villalobos, David

From: Jshefflin@aol.com
Sent: Friday, April 23, 2010 2:09 PM
To: Villalobos, David
Subject: Please deny NextG wirelesscellular antennas

Categories: Blue Category

AGENDA ITEMS

ITEM #: 3

MEETING DATE: 4-28-10

April 23, 2010

Dear Montecito Planning Commission

I am writing to express my extreme concern about NextG's plan to install wireless cellular antennas next to our homes and schools in Montecito.

These cell antennas represent a real and significant threat to our communities on multiple fronts, aesthetics, property values, and health important.

Currently, the County Ordinance allows cell antenna installations next to homes and schools without any neighborhood oversight or control. Indeed, some antennas have already been installed within Public Utility Easements on homeowners' properties with no notification to the homeowner and without their consent. Because these antennas and related equipment represent a visual blight and raise serious health concerns, it has been conclusively shown that the presence of a cell antenna on or near aproperty can reduce that property's value by 15% or more. Thus, I strongly believe that cell antennas need to be sited very carefully to protect the best interests of the community, and that residents should have the right to determine whether a cell tower or antenna is installed on their property.

I am aware that the applications submitted by NextG to install cell antennas throughout our county represent but the first wave of such installations. Should NextG be permitted unfettered license to install antennas wherever they see fit, it will inevitably open the door to other companies who wish to do the same thing. This means that we could soon be seeing these antennas going up on literally any and all utility poles throughout our county, and we, the residents, will have absolutely no say in the matter.

This kind of antenna proliferation would drastically change the way our streets and neighborhoods look and feel, and to allow it is tantamount to permitting outside corporate control over community property values and aesthetics. The County has the right and duty to regulate installations of this kind based on aesthetics and protection of property value.

I beseech the Board to act NOW, before it is too late. Please vote to deny NextG's permits and their appeal on March 16th, 2010.

Signed: Joanne Shefflin

Date: 4/23/10

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S.B. COUNTY
PLANNING & DEVELOPMENT
HEARING SUPPORT

Joanne Shefflin
995 Lilac Dr.
Montecito, CA
93108

(805) 565-9160
e-mail: jshefflin@aol.com

AGENDA ITEMS

ITEM #: 3

MEETING DATE: April 28, 2010 4-28-10

FILE COPY

Montecito Association
The voice of our community

2010 Officers:
Peter van Duinwyk
President
William Palladini
1st Vice President
Elisa Atwill
2nd Vice President
Monica Brock Petersen
Secretary
Gene Sinser
Treasurer

Directors:
Evan Aptaker
Elisa Atwill
Darlene Bierig
Tom Bollay
J.W. Colin
Michael Cook
Mindy Denson
David Kent
Richard Nordlund
William Palladini
Monica Brock Petersen
Robertson Short
Gene Sinser
Peter van Duinwyk
Jean von Wittenburg
Louis Weider

Honorary Directors:
Ralph Baxter
Sally Kinsell
Robert V. Meghreblian
Naomi Schwartz
Richard Thielscher
Joan Wells

Executive Director:
Victoria Greene

Office Coordinator:
Carol Celic

Office:
1469 E. Valley Road
Santa Barbara, CA 93108

P.O. Box 5278
Santa Barbara, CA 93150

Tel: (805) 969-2026
Fax (805) 969-4043

info@montecitoassociation.org
www.montecitoassociation.org

Montecito Planning Commission
123 E. Anapamu Street
Santa Barbara, CA 93101

RE: NextG Antenna ESB15, School House Road, 09LUP-00000-00320, Montecito Planning Commission Hearing of April 28, 2010

Dear Commissioners:

The Montecito Association requests that the Planning Commission grant the community's appeal of P&D's decision to grant this land use permit. The School House Road facilities are part of the larger NextG project intended to provide a distributive antenna system (DAS) to support MetroPCS cellular service and potential future clients. We believe that the proposed system is more appropriately evaluated as a whole, thus providing the opportunity for appropriate and legally defensible analysis under the California Environmental Quality Act and consideration of siting options that are least impactive to the community.

We ask that you consider the visual effects of the School House facilities carefully. These facilities would contribute significantly to the adverse visual effects of existing electrical substation facilities nearby. Further, the proposed location is not consistent with the policies and standards of the Comprehensive Plan. School House Road has an existing on-road trail designated on the Park, Recreation and Trails map of the Comprehensive Plan. An antenna placed in this location would increase visual blight in the immediate area that is heavily used to access Montecito Union School. It would also add to the visual blight created by the existing poles and cabling.

We do not believe that locating equipment in this location is consistent with Goal LU-M-2 of the Montecito Community Plan which states "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." It is also inconsistent with Montecito Community Plan Policy PRT-M-1.6 which states "New development shall not adversely impact existing recreational facilities and uses."

The existing above ground utilities in Montecito are an aberration in an area of unsurpassed beauty. The Montecito Association has taken a firm position in support of elimination of overhead utilities. Please support us in this effort and do not allow NextG to degrade the visual character of Montecito.

Sincerely,

Peter van Duinwyk

Peter van Duinwyk, President

AGENDA ITEMS

ITEM #: 3

MEETING DATE: 04-28-2010

April 23, 2010 mpc letter

Montecito Planning Commission

I am writing to express my extreme concern about NextG's plan to install wirelesscellular antennas next to our homes and schools in Montecito.

These cell antennas represent a real and significant threat to our communities on multiple fronts, aesthetics, property values, and health being but three of the mostimportant.

Currently, the County Ordinance allows cell antenna installations next to homes andschools without any neighborhood oversight or control. Indeed, some antennas have already been installed within Public Utility Easements on homeowners' propertieswith no notification to the homeowner and without their consent. Because these antennas and related equipment represent a visual blight and raise serious health concerns, it has been conclusively shown that the presence of a cell antenna on or near aproperty can reduce that property's value by 15% or more. Thus, I strongly believe thatcell antennas need to be sited very carefully to protect the best interests of the community, and that residents should have the right to determine whether a cell tower or antenna is installed on their property.

I am aware that the applications submitted by NextG to install cell antennas throughout our county represent but the first wave of such installations. Should NextG be permittedunfettered license to install antennas wherever they see fit, it will inevitably open thedoor to other companies who wish to do the same thing. This means that we could soon be seeing these antennas going up on literally any and all utility poles throughout ourcounty, and we, the residents, will have absolutely no say in the matter.

This kind of antenna proliferation would drastically change the way our streets and neighborhoods look and feel, and to allow it is tantamount to permitting outside corporate control over community property values and aesthetics. The County has the right and duty to regulate installations of this kind based on aesthetics and protection of property value.

I beseech the Board to act NOW, before it is too late. Please vote to deny NextG'spermits and their appeal on March 16th, 2010.

Signed: Susan Fuhrer Don Fuhrer

Date: April 24, 2010

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S.B. COUNTY
PLANNING & DEVELOPMENT
HEARING SUPPORT

AGENDA ITEMS

ITEM #: 3

MEETING DATE: 4-28-2010

April 23, 2010

Montecito Planning Commission

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protection of property value.

I beseech the Board to act NOW, before it is too late. Please vote to deny NextGispermits and their appeal on March 16th, 2010.

Signed: Jodi Fishman-Osti Jodi Fishman-Osti

Date: 4/23/2010 4/23/2010

AGENDA ITEMS

ITEM #: 3

MEETING DATE: 4-28-2010

mpc letter.txt

April 23, 2010

Montecito Planning Commission

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Signed: Julie and Robert Teufel

Date: April 27, 2010

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HEARING SUPPORT

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).*

The proposed project is inconsistent with Montecito Community Plan 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.*" Montecito's roadways, including School House Lane, express a semi rural aesthetic given the absence of curbs, gutters and sidewalks, the proliferation of trees and the generally low densities of surrounding development. Additionally, the Montecito Community is explicit in regard to their interest in perpetuating the semi-rural roadway aesthetic with their intention to underground poles (Montecito's adopted Overhead Utility Policy as expressed in the appeal letter dated March 21, 2010). School House Lane itself is currently encumbered by 11 utility poles at and around the proposed project site. These poles carry both high voltage distribution lines as well as lower voltage power lines and represent a departure from the aesthetic community values. Erection of additional infrastructure on one of these poles, proposed in the project, would serve to exacerbate the already diminished semi-rural character of the roadway. Therefore this finding cannot be made.

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

The project includes one metal equipment box painted brown measuring 6" x 6" x 32" and one omni directional whip antenna measuring 26" in height. These facilities, to be mounted on an existing utility pole within the School House Road neighborhood, would be readily visible to all roadway users, including users of the Board adopted pedestrian trail along School House Road. Therefore the project is not located to minimize its visibility from public view and this finding cannot be made.

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

School House Lane, while residential in nature, still perpetuates the Montecito semi rural aesthetic. The existing utility pole proposed to be used in association with the project is isolated from the surrounding urban forest and projects significantly above an established mature hedge. Installation of equipment on that pole would be especially prominent as a result. The equipment box would extrude 6" or more from the existing pole, and the 26" whip antenna would be visually isolated at the top of the 29' pole and extending to a total height of 31' calling attention to it rather than blending in. Therefore this finding cannot be made.

2.2.4 Does not meet ulb standard.

Staff Recom
- Uphold appeal
- Make the reqd findings for denial of the project as proposed at the 4/28 hearing
- Determine the project is exempt from CEQA

NextG Networks

EMPOWERING NEXT GENERATION WIRELESS NETWORKS

Corporate Headquarters:

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2216 O'Toole Ave.
San José, California 95131

Tel: (408) 954-1580
Fax: (408) 383-5397
Web: www.nextgnetworks.net

Writer's Address:

Patrick S. Ryan
NextG Networks, Inc.
1444 Blake Street
Denver, Colorado 80202

Tel: (303) 835-3574
Fax: (303) 265-9737
Email: pryan@nextgnetworks.net

October 14, 2009

VIA EMAIL AND FEDERAL EXPRESS

COUNTY OF SANTA BARBARA
Attn: David Ward, Deputy Director
Santa Barbara County Planning and Development
123 East Anapamu Street
Santa Barbara CA 93101

re: NextG Networks of California, Inc.
Request for Additional EMF Studies

Dear Mr. Ward:

I am writing on behalf of NextG Networks of California, Inc. ("NextG") and the application that has been made for the placement of approximately thirty-nine (39) low-power antennas on existing utility poles in the County of Santa Barbara ("County"). To be clear: the antennas and ~~transmitters that~~ NextG is proposing are extremely low power, such that when a person stands at the base of the utility pole, the anticipated emissions are .4%--that is, *less* than one half (1/2) of one (1) percent—of the allowable safe limits. In the telephone conference that we had on October 7, 2009, the County stated that the documentation that NextG has provided to the County regarding electromagnetic frequency emissions ("EMF" or "RF emissions") is deficient, because *(i)* the documentation is not "site specific," and *(ii)* the documentation does not include actual on-site measurements of the "ambient" and "cumulative" levels of the EMF, including other sources in the area. As described below, we are addressing the first point with the enclosure of a revised report. However, the second point is more problematic and will be addressed in detail as a legal matter, and we request that the County Counsel's office review and provide a response to this issue. Importantly, the whole matter is potentially irrelevant since NextG's facilities are unlike the traditional full, "macro" type facilities of carriers, and because of their extremely low power, should be considered to be categorically excluded from review by virtue of the FCC's regulations.

I. NextG's Facilities Are "Categorically Excluded" From RF Emissions Testing

As a threshold matter, NextG emphasizes that its facilities qualify as "categorically excluded" from EMF regulation. The FCC has concluded that due to their low power and height above ground level, certain facilities, by their very nature. are highly unlikely to cause human exposures in excess of the FCC's guideline limits. Therefore, such facilities qualify as "categorically excluded" and exempted from routinely having to determine compliance with the FCC's EMF regulations. 47 C.F.R. § 1.1307(b)(1). In this case, NextG's facilities thus qualify as "categorically excluded" based both on their low power and their height above ground level. This status alone

should be the end of the analysis. However, as more fully discussed below, to the extent that the County is seeking to impose more stringent regulations on the deployment of NextG's nodes based on EMF, those regulations are clearly preempted and unenforceable. 47 U.S.C. § 332(c)(7)(B)(iv).

II. The County's Request for Site-Specific Studies

The report submitted by Dr. Jerrold Bushberg dated April 29, 2009 is complete and site-specific inasmuch as it was written, specifically, to cover all scenarios pertaining to NextG's deployments in the County. However, with this letter, we are providing an updated report dated October 12, 2009, which has been reviewed and updated to include the specific details of the full range of sites proposed by NextG in the County. This report integrates a new Attachment 3, and in that attachment the report lists, with specificity, its applicability to each of NextG's sites in the County (thereby satisfying the County's site-specific requirement). According to the report, the average EMF exposure at the base of the utility pole (where the general public is most likely to be located) is not expected to exceed 0.4% of the applicable Federal Communications Commission's standard. Even at the worst-possible point—that is, touching the base of the antenna—and using the maximum possible emissions (what Dr. Bushberg refers to as the "worst-case scenario"), the antenna emits 57.2% of the applicable standard at its base. In order to experience this "worst-case scenario," an individual would have to climb the utility pole and touch the antenna (which is unlikely, and would be a criminally prosecutable offense). Even then, *the levels are within acceptable limits*. In short, NextG's equipment has been certified by a credible third-party resource to be well within the FCC's limits in all possible scenarios: at the base of the pole, and on the pole, essentially in contact with the antenna. It is so low powered so as to be categorically exempt as a matter of law. And to the extent that any of these are in question, the matter is moot since the County's code does not, not its face, require any ambient or cumulative studies.

III. The County's Request for Ambient and Cumulative Testing for Each Site

The County has explained to us in various calls and discussions (and in particular, in our telephone conference of last week) that it wishes to have site-specific, empirical measurements of "ambient" and "cumulative" levels of RF emissions. However, there is no stated requirement in the County code for either "ambient" or "cumulative" levels, as these terms do not appear anywhere in the text of the applicable ordinance. The relevant section of County's code, at §33.44.010.E.b, states as follows:

> ~~Initial compliance with this requirement [for EMF compliance] shall be~~ demonstrated for commercial telecommunication facilities through submission, at the time of application, for the necessary permit or other entitlement, of a report prepared by a third-party certified engineer that utilizes site-specific data to predict the level of RF emissions in the vicinity of the proposed facility in comparison with federal MPE limits.

Although the County has explained that it has interpreted this section of the ordinance to require actual, empirical measurements, in fact, that is not what the ordinance says. To the contrary, the County's code requires that NextG provide "site-specific data *to predict* the level of RF emissions . . ." The reports that have been submitted do just that: they *predict* the level of RF emissions in the area, and with the submission of the enclosed, revised report, it is (without question) "site specific." As previously noted, there is nothing in the code that requires measurements, nor is there *any* use of the word "cumulative" or "ambient" within the text of the code. Thus, even

though NextG's sites qualify for a categorical exemption, the prediction methodology that NextG has provided is based on computerized modeling that the FCC has published, and are generally accepted within industry.[1] It would be a crime for any citizen to climb the pole, and they would be more likely to suffer injury from electrocution of the lines from SCE than any harm from NextG's facilities. Importantly, the FCC convened a group of local officials many years ago who agree that no further testing or compliance in this type of scenario should be required.[2]

The County's request for specific measurement prior to installation further promulgates what Congress has called a "patchwork" of different requirements among municipalities. By way of example, no such testing is required for the low-power installations that NextG is proposing in neighboring Carpinteria, Goleta, and the City of Santa Barbara. In particular, in Goleta, we note that the city recently undertook a comprehensive rewrite of their code and concluded that NextG's installations are acceptable, fall within the relevant exceptions, and have accepted the same version of the report that has previously been filed with the County. It is, thus, apparent that County's stated (but unpublished) request for "cumulative" and "ambient" tests goes beyond any other municipality in the region—and indeed, in the state—and is asking NextG to provide more information than it has ever provided in any scenario (NextG's deployments include approximately 2,000 such installations in California, and nearly 6,000 nationwide). Since there are no additional wireless facilities other than NextG's proposed facilities on the utility poles, even if the County's code required "cumulative" testing (which it does not), the concept would not apply since there are no additional transmissions on the site. Even then, setting aside the fact that specific, empirical testing of each site is not required by text of the County's code, the requirement is preempted if the effect of it is to regulate the emissions of the carrier.

IV. The County's Request is Preempted by Federal Law

Ultimately, the position the County is advancing—in addition to being absent in the County's code—is preempted by federal law. Section 332(c)(7)(B)(iv) of the Communications Act clearly prohibits the County from regulating the deployment of wireless facilities based on RF emissions. 47 U.S.C.. § 332(c)(7)(B)(iv). House Report 104-204, which accompanied adoption of Section 332(c)(7), reveals Congress' intent to achieve national uniformity over RF emissions standards:

> The [Commerce] Committee has received substantial evidence that local zoning decisions, while responsive to local concern about the potential effects of radio frequency emission levels, are at times not supported by scientific and medical evidence. A high quality national wireless telecommunications network cannot exist if each of its component [sic] must meet different RF standards in each community. The Committee believes the [FCC] rulemaking on this issue (ET Docket 93-62) should contain adequate, appropriate and necessary levels of protection to the public, and needs to be completed expeditiously.

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[1] *See Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields*, OET Bulletin 65 (Aug. 1997).

[2] Several years ago, a committee formed by representatives of local governments created an FCC publication entitled *A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance* (June 2, 2000). In the Local Official's Guide, the committee stated that "if people are not able to come closer to an antenna than the applicable distance shown in Appendix B, there should be no cause for concern about exposure exceeding the FCC guidelines." *Id*, at 12. (emphasis in original).

H. Rep. No. 104-204, at 95 (1995), reprinted in 1996 U.S.C.A.N.N. 10, 61-62. According to one federal court in California,

> it is also established that in enacting the statute, Congress was concerned with the inconsistent and occasionally conflicting "patchwork of requirements" that could inhibit deployment of personal communications services, and it endeavored to expand wireless services and increase competition among providers by reducing the regulation and bureaucracy precluding steady and rapid expansion of service and protecting against decisions by local authorities that are irrational and without substance. . . . Under the Act, local governments retain control over decisions regarding the placement, construction and modification of personal wireless service facilities (§ 332(c)(7)(A)) so long as they . . . are not based on the environmental effects of radio frequency emission to the extent that such facilities comply with the Federal Communications Commission's regulations concerning such emissions (§ 332©(7)(B)(iv)).

California RSA No. 4 v. Madera County 332 F.Supp.2d 1291 (E.D. Cal. 2003)(citing *Southwestern Bell Mobile Systems, Inc. v. Todd*, 244 F.3d 51, 57 (1st Cir.2001; *Omnipoint Corp. v. Zoning Hearing Bd. of Pine Grove Township*, 181 F.3d 403, 407 (3d Cir.1999); and H.R. Rep. 104-204).

Indeed, municipal attempts to require site-specific, ambient measurements (even when not codified) are not new. For example, the imposition was also attempted, unsuccessfully, by the City of Carlsbad, when the City council expressed concern "about the cumulative health effects caused by RF emissions from the proposed cell site." *AT&T Wireless Services of California LLC v. City of Carlsbad*, 308 F.Supp.2d 1148, 1154 (S.D. Cal. 2003). Indeed, *AT&T vs. Carlsbad* contained many of the same concerns that were described by you in our telephone conversation of October 7th, 2009. Specifically, ~~the Court~~'s record excerpted the citizens' concerns regarding RF emissions in the following way:

> It's an emotional issue that people have, and even though we are not allowed to speak of health concerns, as you know, there are no long-term studies of low level radiation, the effects on the community. And so there is kind of a palpable fear and a concern about those issues and especially in this neighborhood . . .

Id, at 1163. Based on the facts, in Carlsbad—which are very similar to those presented here—after reviewing the above-referenced concerns, the Court had little difficulty concluding that Congress intended what it meant: to have this field occupied and preempted by federal law:

> having reviewed the administrative record the court cannot reasonably conclude that the evidence supporting the denial decision was substantial especially in light of the high degree of attention drawn to the concern over the health effects of RF emissions by the residents, planning commission, and city council. Therefore, the city's decision in denying ATT's applications violated § 332(c)(7)(B)(iii) and (c)(7)(B)(iv) and cannot stand.

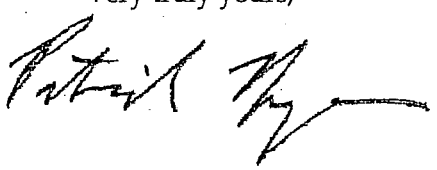
Id.

Accordingly, it is clear that the County's current demands are in conflict with Section 332(c)(7)(B)(iv) and cannot be enforced. Having submitted a comprehensive, third-party study that shows that NextG's installations are both Categorically Excluded and far below the applicable limits, there is no need to submit any additional reports. We are confident that our studies will satisfy any legal test.

V. Conclusion

For the foregoing reasons, the County's requirement of site-specific, ambient, cumulative testing is not lawful, and is preempted by federal regulations. NextG therefore requests that the County review and evaluate the sites that have been proposed based on the reports that have been submitted. If the County perceives any deficiency in the reports, we request that you provide us a response, in writing, to these points.

Very truly yours,



Patrick S. Ryan
VP, Government Relations & Regulatory Affairs

Enclosure: Revised report, dated October 12, 2009, from Dr. Bushberg

Copies: Mike Munoz, Esq. (County Counsel's Office) (by email)
Anne Almy (County P&D) (by email)
Megan Lowery (County P&E) (by email)
Sharon James (NextG)

NextG Networks

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October 26, 2009

VIA EMAIL AND HAND DELIVERY

SANTA BARBARA COUNTY BOARD OF SUPERVISORS
Attn: Supervisor Joseph Centeno, Chair
Supervisor Janet Wolf, Vice Chair
Supervisor Salud Carbajal
Supervisor Doreen Farr
Supervisor Joni Gray

re: NextG Networks of California, Inc.

Honorable Chairman Centeno,
Honorable Supervisors,

NextG Networks of California, Inc. ("NextG") has made applications to the County of Santa Barbara ("County") for a total of thirty-nine (39) installations in the County's jurisdiction.[1] On October 20, 2009 the County Board of Supervisors held a "briefing in the matter of the Santa Barbara County Telecommunications Program and current permit processing."[2] At the end of the briefing, the Board voted unanimously to direct staff to respond to a number of "directives," each of which is highly problematic in separate respects.[3] The County staff had previously indicated

[1] In addition to the thirty-nine (39) nodes that have been applied for in the County, NextG has entered into a Right-of-Way Use Agreement with the Hope Ranch Homes Association, and plans on submitting an additional nine (9) sites as part of that agreement, for a total of forty-eight (48) nodes in the County's jurisdiction.

[2] Board of Supervisors Agenda Letter for Agenda of October 20, 2009.

[3] The relevant text of the minutes are as follows:

> A motion was made by Supervisor Carbajal, seconded by Supervisor Wolf, that this matter be Acted on as follows: Directed staff to explore amendments/enhancements to the current County Ordinance including but not limited to the following: Potential for more transparency/public input in the process, enhanced protection to communities from potential negative health effects, potential moratorium on permitting facilities, 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, franchise/sublease issues, cumulative impacts of such facilities, and potential evaluation of high use and/or high risk sites such as schools and health facilities and to return to the board with recommendations as appropriate.

(over a course of several weeks) that permits would be available very shortly; however, since the Board has taken its direct interest in NextG's application, there is currently no indication of when permits may be granted. Additionally, the staff has asked NextG to reevaluate some of its installations, although to date, no single land-use application has been approved (even in cases where there is little or no controversy). Even more problematic is the fact that NextG has been told to stop work on the installation of its fiber-optic backbone (which runs through the County), even though the County's code expressly exempts permitting requirements for that activity.[4] This type of intervention—which clearly sources from the Board—is unwarranted for a "Tier I" process, which does not (by the County's own design) require public input nor any influence from the Board, except in the case of appeal. NextG hereby files this letter with the County and hopes that the issues will be quickly evaluated so as to avoid formal escalation.

The contextual background is important to understand: NextG's application to the County is by no means new. In November 2004, NextG sent an introductory application letter to County Administrator's office, which included a request for access to the County's public rights-of-way for the very same system that is currently under review. In the 2004 letter, NextG included an overview of its installation proposals, together with photographs and other details. For a period of about six months after NextG's 2004 application, we attempted to seek clarification from the County on any special requests; and, even though an agreement cannot be required under law (since NextG holds a statewide franchise under P.U. Code § 7901), NextG nonetheless offered such an agreement. The undersigned also engaged in correspondence and telephone conversations with the County Counsel's office. Ultimately, the County did not express any interest in an agreement and instead instructed NextG to make applications under the County's code. We have now done that and are committed to having the network construted in December 2009, so that it is operational in January 2010.

NextG's efforts with the County have been long and transparent. Accordingly, there is no basis, five years later, for the type of action that the County is currently undertaking, in particular contemplating the imposition of a moratorium affecting NextG's applications after such applications have been submitted and are complete. Yet, according to the County's published Minutes Note, File #09-00907, the Board "Directed staff to explore amendments/enhancements to the current County Ordinance." Each of such enhancements is excerpted below I as captured in the Board's minutes, with a response in each case.

I. "Potential for more transparency/public input in the process."

NextG's applications were carefully engineered solutions to meet the County's stated--and codified—preference for "Tier I, very small facilities," and they meet all of the required development standards required for these projects as set forth in § 35.44.010.C.1.(a) and § 35.44.010.D. As explained in the staff's presentation, when (in approximately 2005) the County underwent its fifth round of telecommunications ordinance revisions in the course of a decade, the County clearly established four (4) different tiers of projects, and the Tier I category was expressly intended for "very small facilities" like NextG's, and to strike a balance between administrative efficiency for facilities that use existing infrastructure and are less than a certain size, and larger

[4] The Santa Barbara County Code at § 35.20.040.2.j exempts permitting requirements for inland installations of "poles, wires . . . and similar installations erected, installed or maintained by a public . . . utility."

facilities for which a public process is warranted. The ordinance is extremely specific: § 35.44.010.C.1.(a)(3) allows a single omnidirectional antenna to extend up to "40 inches above the height of the structure," and subsection (1) requires that the "associated equipment shall not exceed a combined volume of one cubic foot." NextG's proposal complies with this Tier I application in all respects. It is inappropriate for the Board of Supervisors to intervene at this late stage--after NextG has made applications that rely on the County's process and such applications have been deemed complete--to ask that the tiering be reviewed *de novo* (and potentially changed).

II. "Enhanced protection to communities from potential negative health effects."

As we have indicated in separate communications with your office, NextG is surprised at the Board's open hostility to matters that have been clearly established under federal law and preempted under the Communications Act of 1996. In particular, we respectfully draw your attention to a similar case in Carlsbad where—like here—it was substantially clear to the courts that the ostensible basis for denials given were really rooted in unfounded health concerns:

> having reviewed the administrative record the court cannot reasonably conclude that the evidence supporting the denial decision was substantial especially in light of the high degree of attention drawn to the concern over the health effects of RF emissions by the residents, planning commission, and city council. Therefore, the city's decision in denying ATT's applications violated § 332(c)(7)(B)(iii) and (c)(7)(B)(iv) and cannot stand.

AT&T Wireless Services of California LLC v. City of Carlsbad, 308 F.Supp.2d 1148, 1163(S.D. Cal. 2003).

It is abundantly clear after more than two hours of statements and inquiries from the Board (and as expressly stated in the very "directives" used as headers in this letter) that any negative action on NextG's applications would be based on the County's desire to regulate based on "potential negative health effects." In addition to the public statements at the October 20th 2009 meeting, similar statements have been made by Board members to the local press.[5] Acting on the location of wireless facilities based on the potential effects of RF emissions has been expressly prohibited by Congress. We respectfully refer you to our letter dated October 14, 2009, which explains that NextG's facilities are "categorically exempt" under the relevant regulations and that their emissions are less than one percent (1%) of the allowable standard.

In addition, we are annexing here a new study that contains site-specific, as-installed measurements of an installation in nearby Carpinteria. In that report, the measurements were so low that they did not even make a significant registration on the equipment typically used for this type of test.[6] Dr. Bushberg states on page 4 that, "Indeed, due to the fact that the instrument that was used for the test is generally calibrated to take measurements between 1% and 600% of the

[5] In a television interview with Channel 3 News of October 20, 2009, Supervisor Janet Wolf stated the intention to "look at . . . saturation, cumulative impacts, the location of being near residences, schools, etc." Additionally, in an article entitled "Supervisors Get an Earful on Proposed Cell-Phone Antenna," *Noozhawk*, October 21, 2009, Supervisor Doreen Farr was quoted as stating that "At the heart of it is the fact that we really don't yet accept or trust the FCC standards." Similarly, Supervisor Joe Centeno was quoted as stating that "We learn that things we used to do, we ought not to be doing anymore because they're harmful for us."

[6] Jerrold T. Bushberg, PhD, *Report on Cumulative Maximum Radiofrequencies*, October 23, 2009.

applicable standard, it is not unusual that fractions of a percentage (and in particular, measurements below 1%) are not discerned, as in the case of this particular test." Finally, NextG's equipment has been "Type Certified" by the FCC and as such, has been independently evaluated to operate within applicable legal parameters. In FCC Report and Order Docket 98-68, the FCC adopted rules for the establishment of Telecommunication Certification Bodies, which in turn, certify equipment to fall within FCC standards pursuant to Parts 2 and 68 of the FCC's rules.[7] The County is preempted from questioning the status of NextG's equipment so certified.

III. "Potential moratorium on permitting facilities."

There is no basis for imposing a moratorium on permitting at this stage of processing NextG's applications, and doing so would be an abuse of discretion and unlawful. Cal. Gov't Code § 65858(c) states that a municipality may not adopt or extend any moratorium absent a finding of a "*current and immediate threat* to the public health, safety or welfare" and unless approval of permits "would result in that *threat to public health*, safety or welfare." (Emphasis added). In other words, there must be some urgency and safety threat in order to legally support the imposition of a moratorium. No such justification exists in this case, particularly since NextG has designed a system that is in full compliance with the Tier I permitting under the County's code, and further, has provided the County with ample evidence that the proposed installations are well below the acceptable federal emission standards. Concerns about RF emissions do not create a current and immediate threat to the public health or safety and as a matter of law cannot be considered by the County. 47 U.S.C. § 332(c)(7)(B)(iv).

Moreover, a moratorium by the County would violate federal law. A moratorium by the County, nearly fourteen (14) years after the passage of the Communications Act of 1996, could hardly be considered to be a *bona fide* reaction to a change in legal landscape; rather, it would be an improper response to NextG's application as a state-franchised utility and would not be sustained by any court. In *Sprint Spectrum L.P. v. Jefferson County*, 968 F. Supp. 1457 (N.D.Ala.1997) the district court set forth a standard that has been cited by many other courts, noting that "[t]he delay created by the [Jefferson County] Commission's moratorium 'has the effect of denying the provision of this new technology and its advantages to consumers." *Id*, at 1468 also (citing *Western PCS III Corp v. Extraterritorial Zoning Auth.*, 957 F. Supp. 1230, 1238 (D.N.M. 1997) ("a moratorium against the expansion of personal wireless services would violate the Telecommunications Act." *Omnipoint Communications, Inc. vs. City of Scranton*, 36 F. Supp. 2d 222, 232-233 (M.D. Pa. 1999). *Also see Sprint Spectrum, L.P. vs. Town of North Stonington*, 12 F. Supp 2d 247, 256 (D. Conn 1998), *Sprint Spectrum L.P. vs. Town of Farmington*, 1997 WL 631104 (D. Conn 1997). In short, a moratorium simply would not be an appropriate mechanism at this late stage, especially as the type of installation NextG proposes is precisely that specified in detail under the existing ordinance.

The holding in *Farmington* is, we believe, similar to how a federal court would decide in this case. The court there struck down a moratorium where "Farmington passed its moratorium sixteen months . . . after the Act came into effect and almost nine months after Sprint's first zoning application." *Id*, at 6. For this reason, a moratorium would certainly lead the parties to litigation.

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[7] 47 CFR § § 2.960, 2.962, 68.160 and 68.162. Also see ET Docket 98-68 (December 17, 1998), available at: http://www.fcc.gov/oet/dockets/gen98-68/.

IV. "Role of CEQA in the regulatory/permitting process"

The role of the California Environmental Quality Act ("CEQA") in the permitting process has been extensively discussed with the County, and NextG has already obtained all of the appropriate CEQA clearances from the California Public Utilities Commission ("CPUC"). For full-facilities-based CLEC carriers such as NextG the PUC is clearly the lead agency for CEQA purposes. There is no fear of piecemealing due to the possibility of other installations in the future, since NextG currently only has one customer contract for the facilities, and assumptions based upon any future additions would be speculative. The CPUC is the only entity with broad discretionary decision-making authority over NextG's proposed services, facilities, and construction throughout the state (and for this project, which includes the cities of Carpinteria, Goleta and Santa Barbara), and as such, is appropriately designated as the lead agency. Cal. Code Regs. tit. 14, § 1505(b). As lead agency, the CPUC's CEQA determinations are "final and conclusive," except under certain exceptional circumstances, and binding on all parties. *Id,* § § 15050, 15162. NextG has informed the Countythat it has obtained the appropriate determination from the PUC in the form of a Notice to Proceed that has been published in the state's clearinghouse. The the opportunity to appeal the CEQA determination for this project has now passed.[8]

V. "Relocation of existing sites."

NextG is entitled to receive the County's decision on its Type I applications administratively as complying with the County's defined, published designation of least intrusive means for wireless sitings. Since the County has intentionally removed public hearings and discretion from the Tier I application process, there is no basis to require that NextG move or relocate its installations, and it is inappropriate for the Board of Supervisors to exert pressure (as it is doing with its directive to staff) to relocate facilities that fall within the ordinance's requirements for Tier I "very small facilities."

The Ninth Circuit's recent decision in § *Sprint PCS Assets v. Palos Verdes Estates,* No. 05-56106, --- F.3d ----, 2009 WL 3273935 (9th Cir. 2009), does not change the analysis in this case. In addition to the fact that the Ninth Circuit's decision wholly-ignored existing California Court precedent interpreting § 7901, there are significant differences between *Palos Verdes Estates* and the situation in the County. In *Palos Verdes Estates,* there was no published preference and tiering of application types, and virtually any kind of application "[could] be denied for . . . adverse aesthetic impacts arising from the proposed time, place, and manner of use of the public property." *Id.* In the County, there is no such ground for denial except in the larger Tier III and IV applications. Moreover, in *Palos Verde Estates,* the installations did not involve existing utility poles that already held various utility installations, which is the case with NextG's installations. Ultimately, *Palos Verdes Estates* did not alter the fact that the County is preempted from acting based on concerns about health effects of RF emissions.

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[8] The relevant Notices to Proceed have been provided to the County Staff. Additionally, they are published on the CEQA state clearinghouse. *See* http://www.ceqanet.ca.gov/ProjDocList.asp?ProjectPK=598960.

VI. "Issues related to third party/peer review" and "Conflict of interest/revolving door policies and laws"

The context here suggests the allegation that, somehow, Dr. Jerrold Bushberg has a conflict of interest with respect to the NextG application by virtue of his having advised the County on RF emissions as a third-party consultant in prior unrelated projects). We do not believe any such current conflict of interests exists in this case. NextG decided to hire Dr. Bushberg because the County staff had previously told NextG that Dr. Bushberg was a trusted third-party expert that the County believed would provide an honest evaluation. If anything, the fact that the County has previously relied on Dr. Bushberg should make him all the more credible.

VII. "Franchise/sublease issues"

Supervisor Carbajal suggested in the hearing that Southern California Edison ("SCE") may somehow be violating its franchise with the County by "subleasing" its poles to NextG. This is simply not the case, as NextG has already acquired joint-ownership rights in the relevant SCE poles by virtue of NextG's membership in the Southern California Joint Pole Committee, a cooperative organization that has existed for more than 100 years. There is nothing in the County's franchise agreement that could possibly derogate NextG's ownership rights in the SCE poles. This has been comprehensively addressed in a letter to Michael R. Ledbetter dated October 20, 2009, addressing, among other matters, NextG's rights under § 224 of the Telecommunications Act of 1996 to access the poles of investor-owned utilities such as SCE to deploy its telecommunications networks.

VIII. "Cumulative impacts of such facilities and potential evaluation of high use and/or high risk sites such as schools and heath facilities."

We draw the Board's attention to the attached report, which contains empirical, cumulative test data on an installation in the area and demonstrates that the installation's RF emissions arebelow one percent (1%) of the applicable standard.

CONCLUSION

NextG has made an application to the County to install "very small facilities" on existing utility poles under the County's Tier 1 administrative process. The application is consistent not only with the County's stated preference for this type of facility but with NextG's rights as a statewide franchise holder under P.U. Code § 7901. In the face of such a lawful application under the County's own ordinance the Board has clearly stated its determination to re-evaluate its ordinance and to attempt to regulate in areas that have been preempted by state and federal law. Additionally, the Board has clearly influenced the staff's disposition on NextG's permitting—which is administrative—and has delayed the project.

In order to avoid further escalation, NextG requests that the Board immediately direct staff that NextG's existing completed applications are exempt from any proposed future revisions to the County's ordinances so that the County staff can proceed with its permitting of the applications under the County's code. NextG further requests the immediate ability to continue the installation of its fiber backbone on existing aerial utility poles.

Very truly yours,

Patrick S. Ryan
VP of Government Relations and Regulatory Affairs

cc: Robert L. Delsman, Esq. (General Counsel, NextG Networks, Inc)
T Scott Thompson, Esq. (Davis, Wright & Tremaine)
Michael Munuz (County Counsel's Office)
Michael Ledbetter (County Counsel's Office)

Encl: Cumulative Report from Dr. Jerrold Bushberg dated October 23, 2009

JERROLD T. BUSHBERG Ph.D., DABMP, DABSNM
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October 12, 2009

Introduction

At your request, I have reviewed the technical specifications and calculated the maximum radiofrequency, (RF), power density from the Phazar antenna model #AWS360-1710-7-T0 N planned for the deployment by NextG Networks of California Inc's ("NextG") deployment of facilities used to transmit Metro PCS frequencies in the County of Santa Barbara, California ("County"). A sample installation is provided in Attachment 1. Detailed antenna specifications, for the omnidirectional antenna which applies to each of the attachments (includes 1dB of co-axial cable loss, antenna gain of 7 dBi, and is designed to transmit within a bandwidth between approximately 1,710 and 2,155 MHz.), are provided in Attachment 2. This analysis is applicable to any situation in which this antenna is the only RF transmission source located on a light standard, utility pole or similar structure, where the distance from the antenna center to the ground is at least 23 feet and the maximum transmitter output power is 20.0 watts. As such, this analysis applies specifically to all of the sites that are referenced in Attachment 3.

Calculation Methodology

Calculations were made in accordance with the cylindrical model recommendations for near-field analysis contained in the Federal Communications Commission, Office of Engineering and Technology Bulletin 65 entitled "Evaluating Compliance with FCC-Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields." Several assumptions were made in order to provide the most conservative or "worse case" projections of power densities. Calculations were made assuming that all channels were operating simultaneously at their maximum design effective radiated power. Attenuation (weakening) of the signal that would result from surrounding foliage or buildings was ignored. Buildings or other structures can reduce the signal strength by a factor of 10 (i.e., 10 dB) or more depending upon the construction material. In addition, for the far field analysis of ground level RF exposure, the ground or other surfaces were considered to be perfect reflectors (which they are not) and the RF energy was assumed to overlap and interact constructively at all locations (which they would not) thereby resulting in the calculation of the maximum potential exposure. In fact, the accumulations of all these very conservative assumptions will significantly overestimate the actual exposures that would typically be expected from such a facility. However, this method is a prudent approach that errs on the side of safety.

RF Safety Standards

The two most widely recognized standards for protection against RF field exposure are those published by the American National Standards Institute (ANSI) C95.1 and the National Council on Radiation Protection and measurement (NCRP) report #86.

The NCRP is a private, congressionally chartered institution with the charge to provide expert analysis of a variety of issues (especially health and safety recommendations) on radiations of all forms. The scientific analyses of the NCRP are held in high esteem in the scientific and regulatory community both nationally and internationally. In fact, the vast majority of the radiological health regulations currently in existence can trace their origin, in some way, to the recommendations of the NCRP.

All RF exposure standards are frequency-specific, in recognition of the differential absorption of RF energy as a function of frequency. The most restrictive exposure levels in the standards are associated with those frequencies that are most readily absorbed in humans. Maximum absorption occurs at approximately 80 MHz in adults. The NCRP maximum allowable continuous occupational exposure at this frequency is 1,000 $\mu W/cm^2$. This compares to 5,000 $\mu W/cm^2$ at the most restrictive of the PCS frequencies (~1,800 MHz) that are absorbed much less efficiently than exposures in the VHF TV band.

The traditional NCRP philosophy of providing a higher standard of protection for members of the general population compared to occupationally exposed individuals, prompted a two-tiered safety standard by which levels of allowable exposure were substantially reduced for "uncontrolled " (e.g., public) and continuous exposures. This measure was taken to account for the fact that workers in an industrial environment are typically exposed no more than eight hours a day while members of the general population in proximity to a source of RF radiation may be exposed continuously. This additional protection factor also provides a greater margin of safety for children, the infirmed, aged, or others who might be more sensitive to RF exposure. After several years of evaluating the national and international scientific and biomedical literature, the members of the NCRP scientific committee selected 931 publications in the peer-reviewed scientific literature on which to base their recommendations. The current NCRP recommendations limit continuous public exposure at PCS frequencies to 1,000 $\mu W/cm^2$.

The 1992 ANSI standard was developed by Scientific Coordinating Committee 28 (SCC 28) under the auspices of the Institute of Electrical and Electronic Engineers (IEEE). This standard, entitled "IEEE Standards for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz" (IEEE C95.1-1991), was issued in April 1992 and subsequently adopted by ANSI. A revision of this standard (C95.1-2005) was completed in October 2005 by SCC 39 the IEEE International Committee on Electromagnetic Safety. Their recommendations are similar to the NCRP recommendation for the maximum permissible exposure (MPE) to the public PCS frequencies (950 $\mu W/cm^2$ for continuous exposure at 1,900 MHz) and incorporates the convention of providing for a greater margin of safety for public as compared with occupational exposure. Higher whole body exposures are allowed for brief periods provided that no 30 minute time-weighted average exposure exceeds these aforementioned limits.

On August 9, 1996, the Federal Communications Commission (FCC) established a RF exposure standard that is a hybrid of the current ANSI and NCRP standards. The maximum permissible exposure values used to assess environmental exposures are those of the NCRP (i.e., maximum public continuous

exposure at PCS frequencies of 1,000 $\mu W/cm^2$). The FCC issued these standards in order to address its responsibilities under the National Environmental Policy Act (NEPA) to consider whether its actions will "significantly affect the quality of the human environment." In as far as there was no other standard issued by a federal agency such as the Environmental Protection Agency (EPA), the FCC utilized their rulemaking procedure to consider which standards should be adopted. The FCC received thousands of pages of comments over a three-year review period from a variety of sources including the public, academia, federal health and safety agencies (e.g., EPA & FDA) and the telecommunications industry. The FCC gave special consideration to the recommendations by the federal health agencies because of their special responsibility for protecting the public health and safety. In fact, the maximum permissible exposure (MPE) values in the FCC standard are those recommended by EPA and FDA. The FCC standard incorporates various elements of the 1992 ANSI and NCRP standards which were chosen because they are widely accepted and technically supportable. There are a variety of other exposure guidelines and standards set by other national and international organizations and governments, most of which are similar to the current ANSI/IEEE or NCRP standard, figure one.

The FCC standards "Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation" (Report and Order FCC 96-326) adopted the ANSI/IEEE definitions for controlled and uncontrolled environments. In order to use the higher exposure levels associated with a controlled environment, RF exposures must be occupationally related (e.g., PCS company RF technicians) and they must be aware of and have sufficient knowledge to control their exposure. All other environmental areas are considered uncontrolled (e.g., public) for which the stricter (i.e., lower) environmental exposure limits apply. All carriers were required to be in compliance with the new FCC RF exposure standards for new telecommunications facilities by October 15, 1997. These standards applied retroactively for existing telecommunications facilities on September 1, 2000.

The task for the physical, biological, and medical scientists that evaluate health implications of the RF data base has been to identify those RF field conditions that can produce harmful biological effects. No panel of experts can guarantee safe levels of exposure because safety is a null concept, and negatives are not susceptible to proof. What a dispassionate scientific assessment can offer is the presumption of safety when RF field conditions do not give rise to a demonstrable harmful effect.

Summary & Conclusions

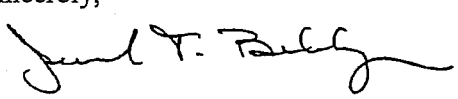
All wireless transmission systems utilizing Phazar antenna model #AWS360-1710-7-T0-N and operating with the characteristics specified above will be in full compliance with FCC RF public safety exposure standards. These transmitters, by design and operation, are low power devices. Even under maximal exposure conditions in which all the channels are operating at full power, the maximum exposure next to and at the elevation of the antenna (i.e., a hypothetical—but unlikely—scenario where an individual climbed the pole and was right next to the antenna while the transmitters are functioning) will not result in RF exposures in excess of 57.2% of the FCC public safety RF exposure standard for these frequencies (see appendix A-1). Thus, this contemplates the worst-case scenario and the sites referenced in Attachment 3 will comply with the applicable standards. As a compliance measure, an information sign containing appropriate contact information and indicating that RF exposures do not exceed the public MPE should be placed near the antenna (see appendix A-2). At ground level, where most exposure to the public is likely to take place, the maximum RF exposure will not result in RF exposures in excess of 0.4% of the FCC public safety standard (see appendix A-3).

A chart of the electromagnetic spectrum and a comparison of RF power densities from various common sources is presented in figures two and three respectively in order to place exposures from wireless telecommunications systems in perspective. It is important to realize that the FCC maximum allowable exposures are fifty (50) times below the level that the majority of the scientific community believes may pose a health risk to human populations. Thus the previously mentioned maximum exposure, next to and at the elevation of the antenna, represents a "safety margin" from this threshold of potentially adverse health effects of more than eighty-seven (87) times. The maximum public exposure at ground level—where the general public is likely to have access to the signals—is more than 12,500 times below this threshold of potentially adverse health effects.

Given the low levels of radiofrequency fields that would be generated from wireless installations conforming to the configuration specified above, and given the evidence on RF biological effects in a large data base, there is no scientific basis to conclude that harmful effects will attend the utilization of these proposed wireless telecommunications facilities. This conclusion is supported by a large numbers of scientists ~~that have~~ participated in standard-setting activities in the United States who are overwhelmingly agreed that RF radiation exposure below the FCC exposure limits has no demonstrably harmful effects on humans.

These findings are based on my professional evaluation of the scientific issues related to the health and safety of non-ionizing electromagnetic radiation and my analysis of the technical specification as provided by NextG Networks. The opinions expressed herein are based on my professional judgement and are not intended to necessarily represent the views of any other organization or institution. Please contact me if you require any additional information.

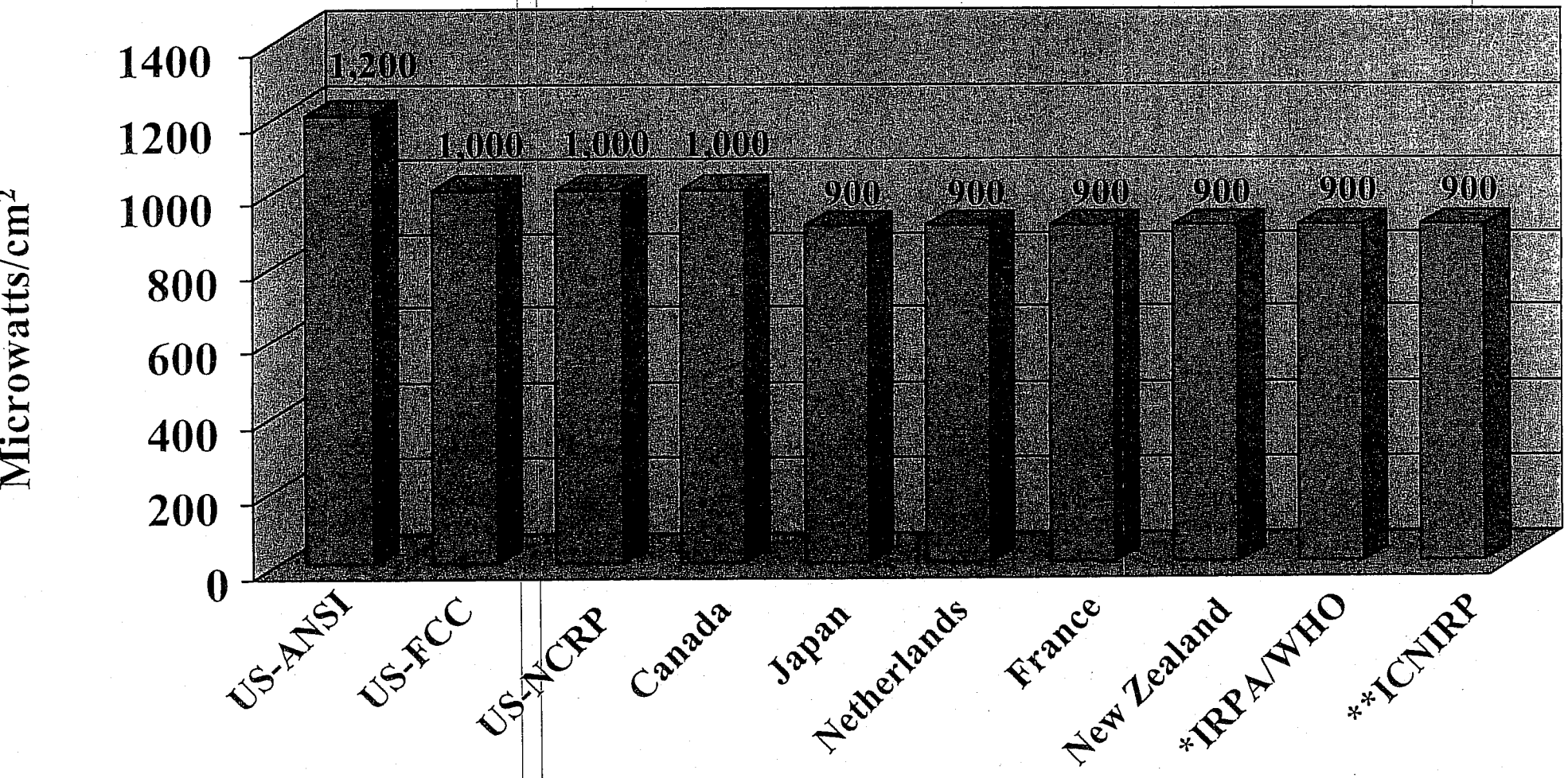
Sincerely,



Jerrold T. Bushberg Ph.D., DABMP, DABSNM
Diplomate, American Board of Medical Physics (DABMP)
Diplomate, American Board of Science in Nuclear Medicine (DABSNM)

Enclosures: Figures 1-3; Attachment 1-3; Appendix A-1, A-2, A-3 and Statement of Experience.

Public Safety Exposure Standards at PCS (~1,800 MHz)Frequencies



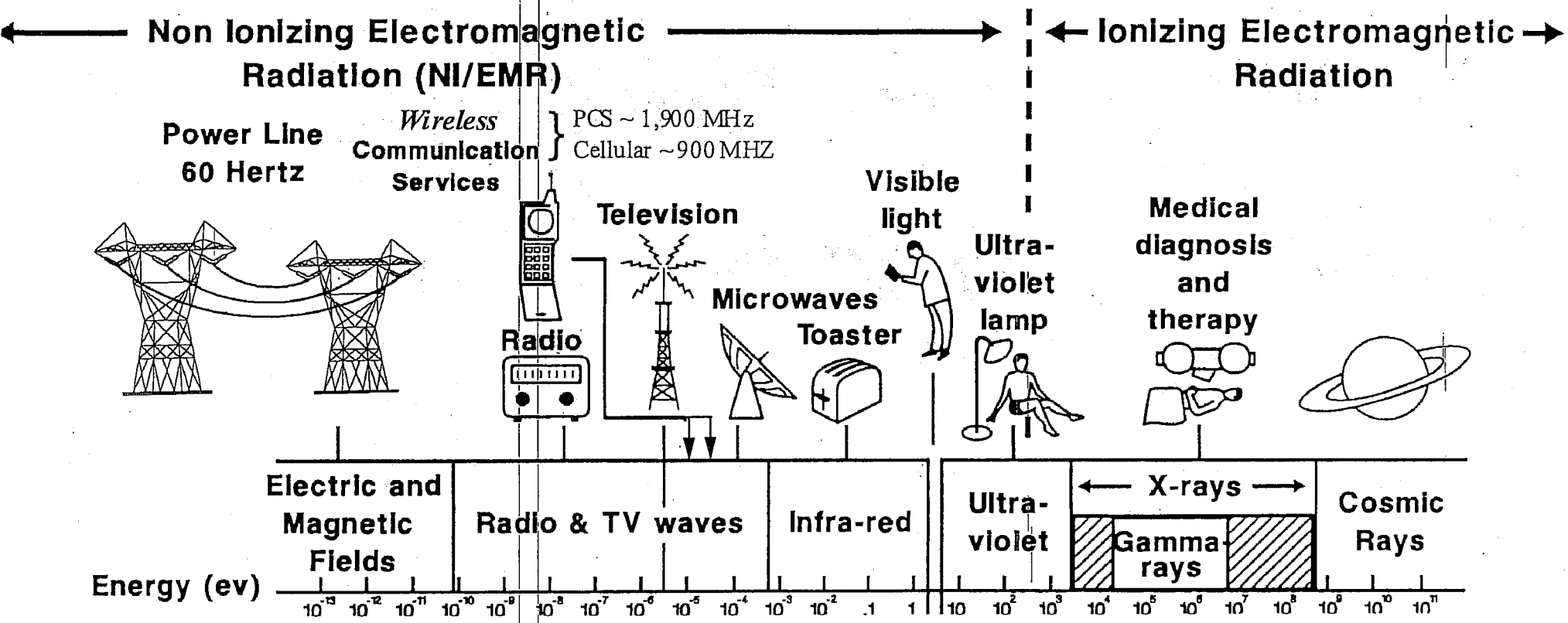
*International Radiation Protection Association (IRPA)/ World Health Organization Environmental Health (WHO) Public Safety Exposure Standard (1993). Members of the Scientific Committee were from:

- Australia
- Canada
- France
- Germany
- Hungary
- Italy
- Poland
- Russia
- United Kingdom
- United States

**International Commission on Non-Ionizing Radiation Protection Public Safety Exposure Standard (1998). Members of the Scientific Committee were from:

- Australia
- Sweden
- France
- Germany
- Hungary
- Finland
- Italy
- Poland
- Austria
- United Kingdom
- United States
- Japan

Figure 1



The Electromagnetic Spectrum

Figure 2

Typical Exposure from Various Radio Frequency / Microwave Sources

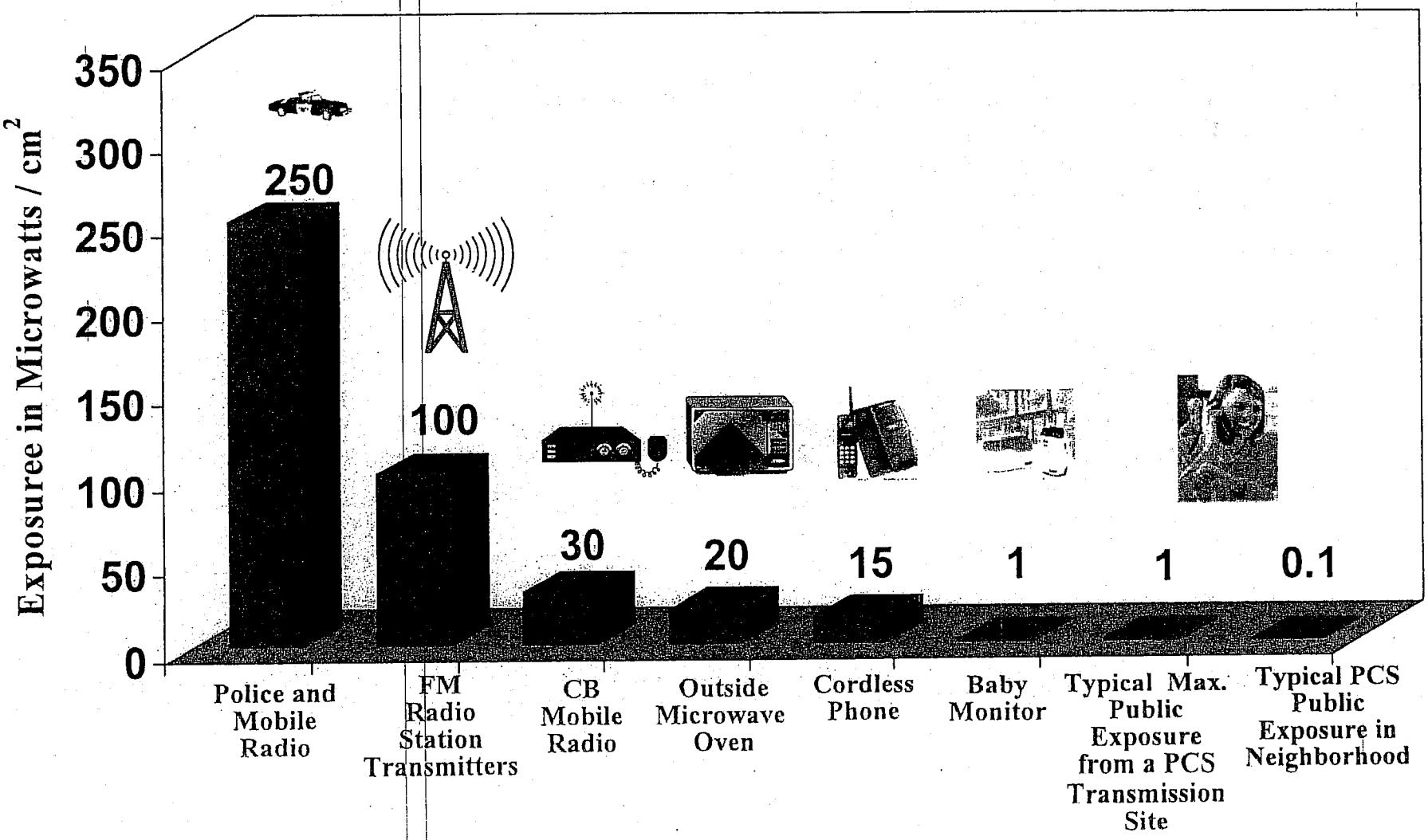


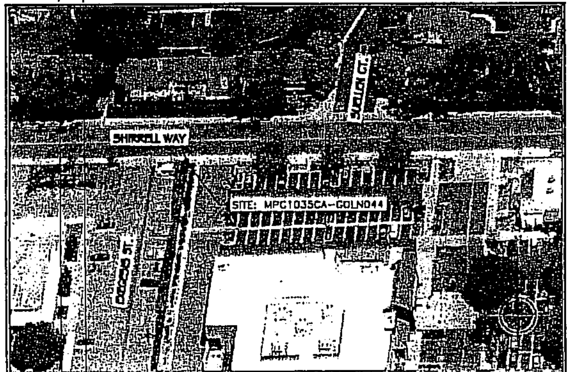
Figure 3

Attachment 1

Example Utility Pole with
Antenna Mounted on Bracket

NextG Networks, Inc.

MPC1035CA-GOLN044
GOLETA
GOLETA, CA 93117



VICINITY MAP

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

CODE COMPLIANCE

PROPERTY INFORMATION

CUSTOMER:	NEXT G NETWORKS INC.
PROJECT:	GOLETA
NODE:	MPC1035CA-GOLN044
LATITUDE:	34.4441
LONGITUDE:	-119.83791
STREET ADDRESS:	6069 SHIRRELL WAY
CITY, STATE:	GOLETA, CA 93117
JURISDICTION:	CITY OF GOLETA
POLE# :	204127
POLE TYPE:	WOOD UTILITY POLE
RAD CENTER / ANTENNA HEIGHT:	26'-0"
ANTENNA TYPE.	AWS360-1710-7-10-N
AZIMUTH FOR ANTENNA:	N/A
POWER TO POLE:	SECONDARY
POLE ACCESS:	ON ROAD
POLE OWNER:	N/A
POLE LOCATION & DESCRIPTION:	N/A

PROJECT SUMMARY

CITY OF GOLETA

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

DIGALERT

1-800-227-2600

CALL AT LEAST TWO DAYS BEFORE YOU DIG

TICKET # ____________

SHEET	DESCRIPTION	REV.
1	TITLE SHEET	0
2	UTILITY NODE / REPEATER POLE EQUIPMENT PROFILES	0
3	MAPS	0
4	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

NextG Networks, Inc.

PROJECT INFORMATION:

MPC1035CA-GOLN044
GOLETA
GOLETA, CA 93117

CURRENT ISSUE DATE: 03/02/2009

PERMIT SUBMISSION:

REV.:	DATE:	DESCRIPTION:	BY:

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks, Inc.

REP:

COMMENTS:

SHEET TITLE: TITLE SHEET

SHEET NUMBER: 1

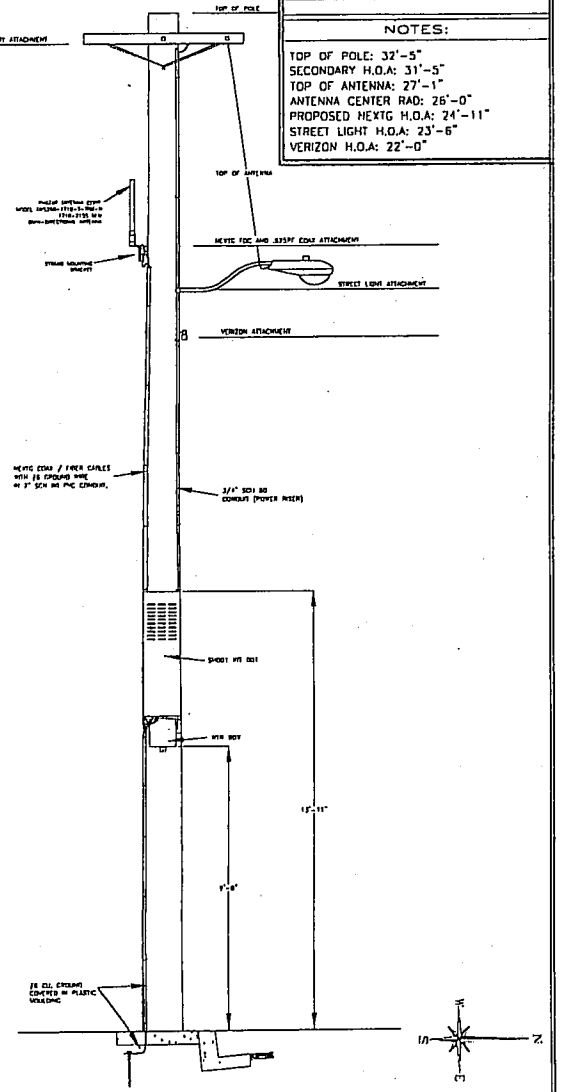
REVISION: 1 OF 4

MAKE READY

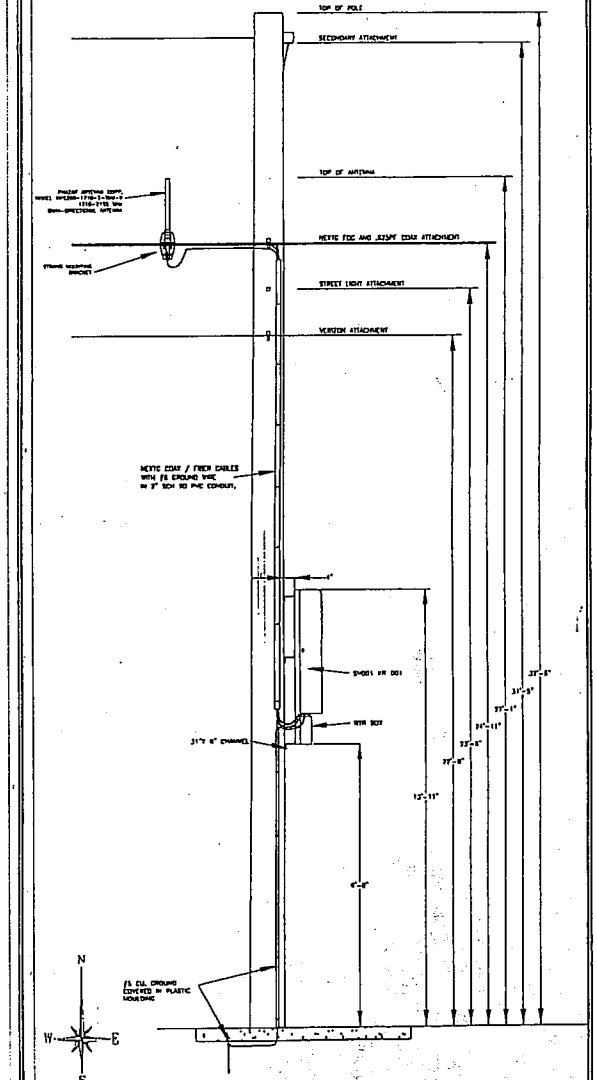
NEW CONSTRUCTION

NOTES:

TOP OF POLE: 32'-5"
SECONDARY H.O.A: 31'-5"
TOP OF ANTENNA: 27'-1"
ANTENNA CENTER RAD: 26'-0"
PROPOSED NEXTG H.O.A: 24'-11"
STREET LIGHT H.O.A: 23'-6"
VERIZON H.O.A: 22'-0"



SCALE: N.T.S. | WOOD UTILITY POLE DETAIL ID #28412Y | LOOKING WEST | A

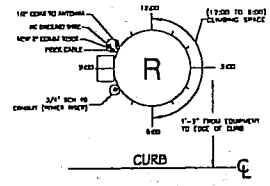


SCALE: N.T.S. | WOOD UTILITY POLE DETAIL ID #28412Y | LOOKING NORTH | B

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

POLE WILL BE STEPPED IN ACCORDANCE TO G095 STANDARDS IN RESPECT TO CLIMBING SPACE.

1-2" NEXTG RISER @ 10:00
1-3/4" POWER RISER @ 8:00



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.

PROJECT INFORMATION:

SVPC1538CA-GOLM644
GOLETA
GOLETA, CA 93117

CURRENT ISSUE DATE:

03/02/2009

PERMIT SUBMISSION:

REV.:	DATE:	DESCRIPTION:	BY:

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks, Inc.

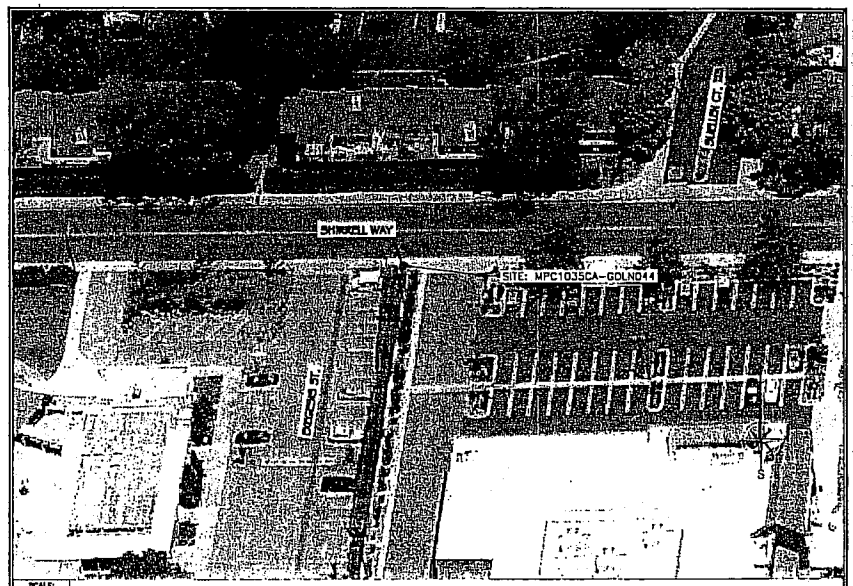
RCP:

COMMENTS:

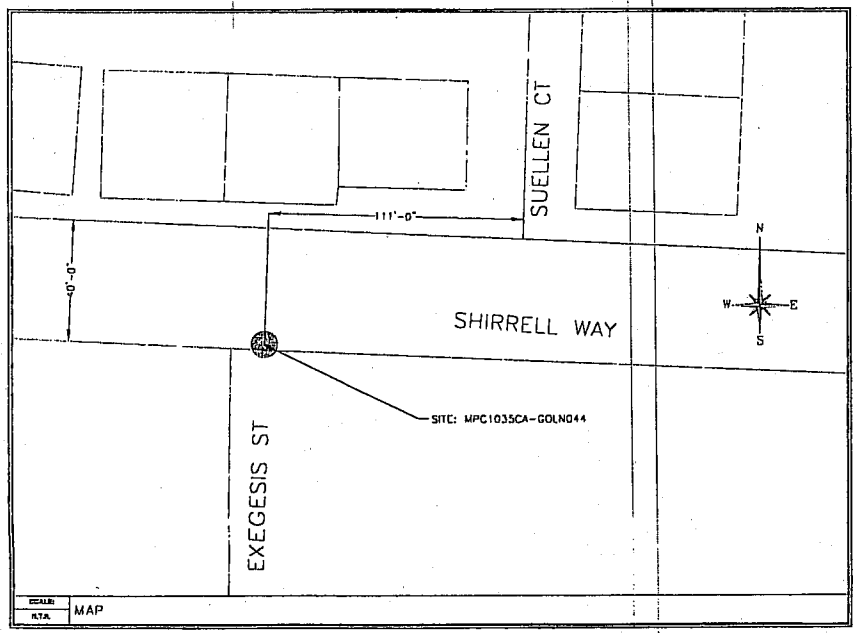
SHEET TITLE:

PROFILES

SHEET NUMBER: 2 | REVISION: 2 OF 4



SCALE: N.T.S. MAP



SCALE: N.T.S. MAP

NextG Networks, Inc.

PROJECT INFORMATION:

MPC1035CA-GOLN044
GOLETA
GOLETA, CA 93117

CURRENT ISSUE DATE:

03/02/2009

PERMIT SUBMISSION:

REV.	DATE	DESCRIPTION	BY

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks, Inc.

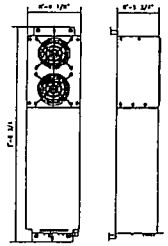
REP:

COMMENTS:

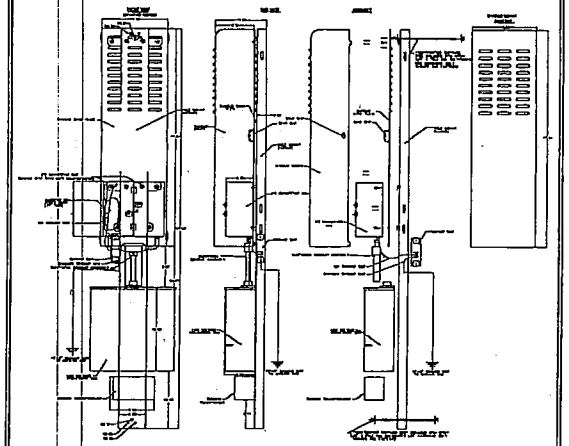
SHEET TITLE:

MAP

SHEET NUMBER: 3 REVISION: 3 OF 4



REPEATER EQUIPMENT DIMENSIONS — A



SHROUD SPECIFICATIONS (SH001) — B

Phazar Antenna Corp.

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

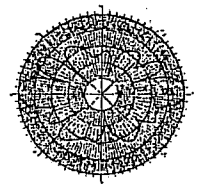
MODEL AWS360-1710-7-10-N

ELECTRICAL SPECIFICATIONS:

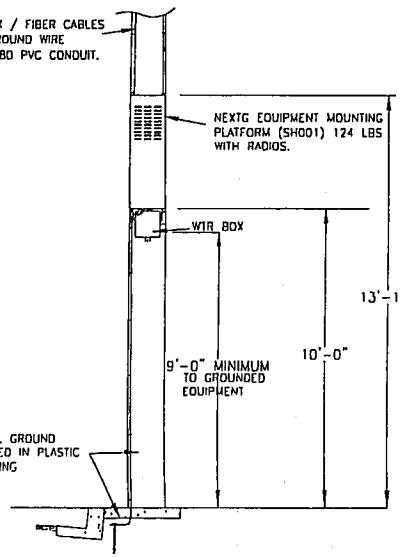
FREQUENCY RANGE	1710–2155 MHz
VSWR	1.7:1 VSWR MAX
FORWARD GAIN	7 dBi
POLARIZATION	VERTICAL
MAXIMUM POWER INPUT	700 WATTS
INPUT IMPEDANCE	50 OHMS
VERTICAL–3dB BEAMWIDTH	18°±1° (NOMINAL)
HORIZONTAL–3dB BEAMWIDTH	360°
AZIMUTH RIPPLE	1.5 dB
ELECTRICAL DOWNTILT	7 AND 4° (10 AND 14 FOR PART NUMBER)

MECHANICAL & ENVIRONMENTAL SPECIFICATIONS:

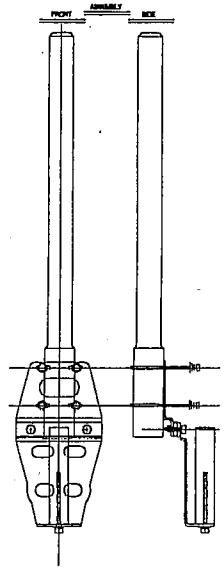
CONNECTOR	TYPE "N" MALE OR 7/16 DIN
MOUNTING	SIDE MOUNT, CLAMPS PROVIDED
DIMENSION AND WEIGHT	26 INCHES X 2.0 INCH O.D./60 lbs.
COLOR	WHITE STANDARD (COLOR OPTIONS AVAILABLE)
WIND SURVIVAL	120 MPH
LIGHTNING PROTECTION	DIRECT GROUND

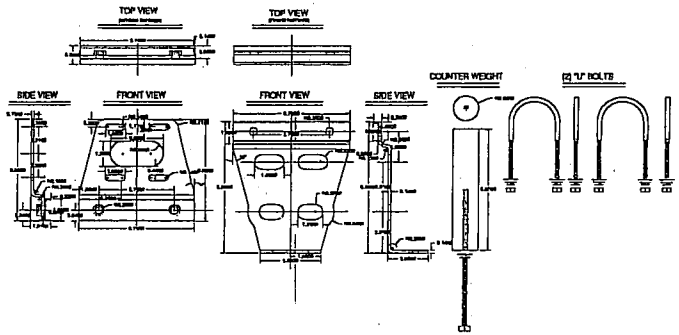


ANTENNA SPECIFICATIONS — C



REPEATER EQUIPMENT AMD MOUNTING CHASIS CONFIGURATION — D





STRAND ANTENNA MOUNT — E

NextG Networks, Inc.

PROJECT INFORMATION:

SMC1035CA-COLN344
GOLETA
GOLETA, CA 93117

CURRENT ISSUE DATE:

03/02/2009

PERMIT SUBMISSION:

REV.:	DATE:	DESCRIPTION:	BY:

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

PLANS APPROVED BY:

NextG Networks, Inc.

REP:

COMMENTS:

SHEET TITLE:

TYPICALS PAGE

SHEET NUMBER: 4 REVISION:

4 OF 4

Attachment 2

Antenna Specifications

1710 – 2155 MHz Omni-Directional Antenna

PHAZAR™
WIRELESS ANTENNAS

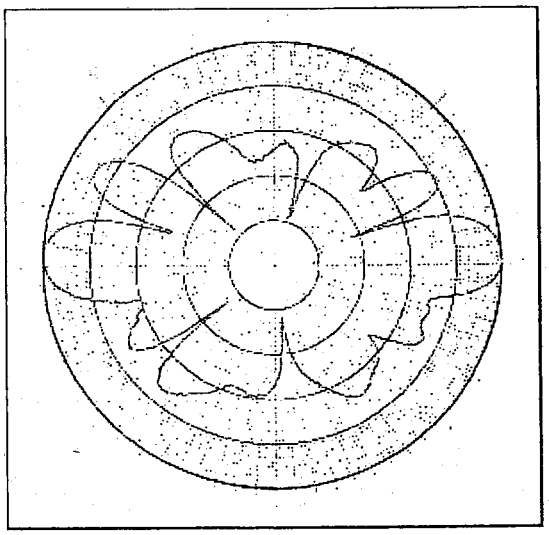
- Rugged, fiberglass radome
- Frequency coverage for entire AWS band
- Model AWS360-1710-7-T0-N

ELECTRICAL SPECIFICATIONS

SPECS	PERFORMANCE
Frequency Range	1710-2155 MHz
VSWR	1.7:1 Max
Forward Gain	7 dBi
Polarization	Vertical
Max Power Input	200 Watts
Input Impedance	50 ohms
Vertical -3dB beamwidth	16 +/- 1 Degree (nominal)
Horizontal -3dB beamwidth	360 degrees
Azimuth Ripple	+/- 0.5 dB
Electrical Downtilt	2 and 4 degrees (T2 and T4 for Part Number)

MECHANICAL SPECIFICATIONS

SPECS	PERFORMANCE
Connector	Type N Female
Mounting	Side mount; clamps provided
Dimension and Weight	26" x 2.0" O.D. / <10 lbs.
Color	White Standard (Color Options Available)
Wind Survival	120 mph.
Lightning Protection	Direct Ground



Attachment 3

NextG Locations Applicable Under This Report

Attachment 3

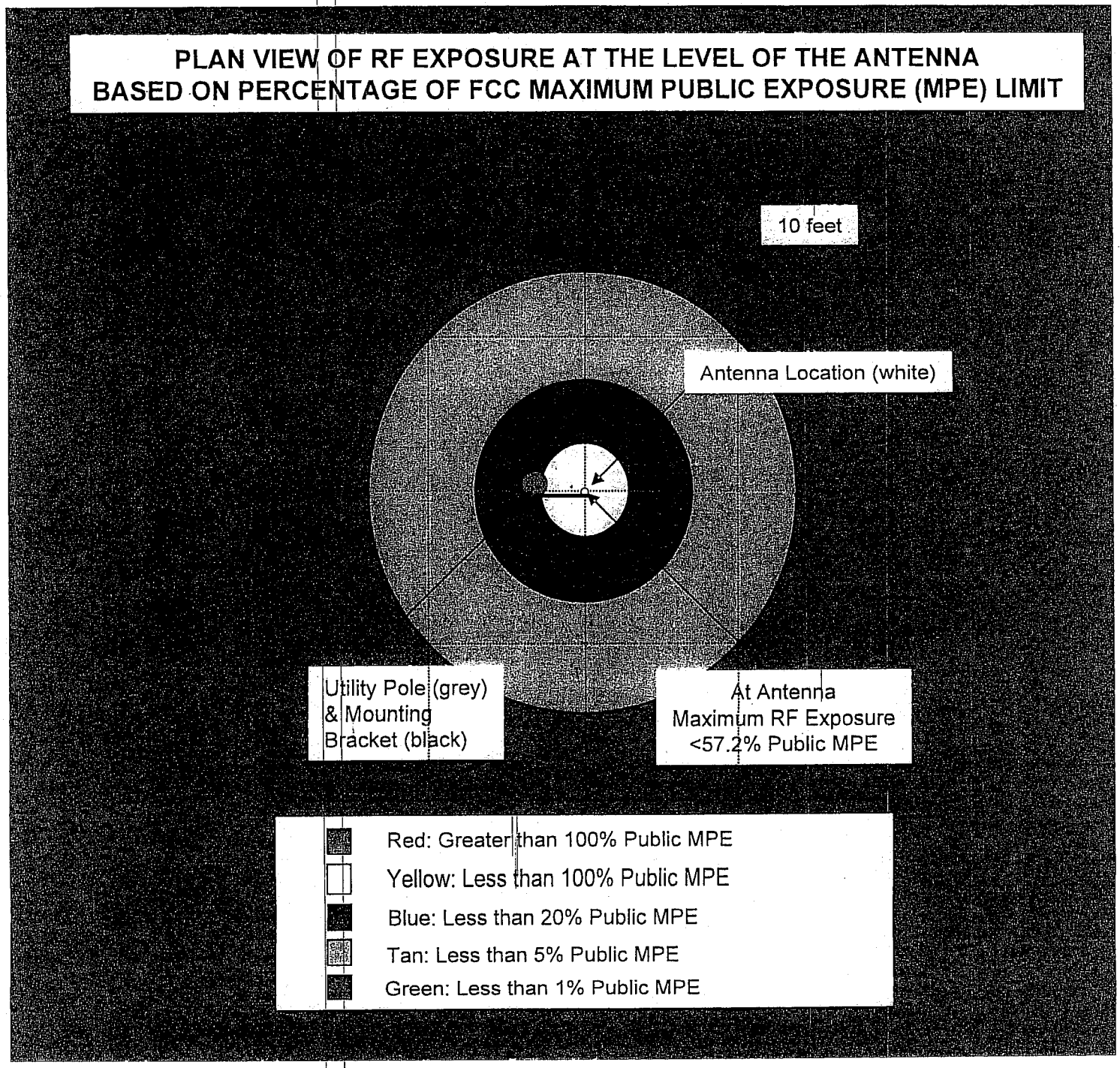
NextG Locations Applicable Under This Report

Site Name	Location	Top of Antenna (AGL)
ESB02	214 Middle Rd	27
ESB03	619 Park Ln	42
ESB06	119 Olive Mill Rd.	31
ESB07	189 Hermosillo Dr. (on Hotspring)	30
ESB08	293 Olive Mill Rd	33
ESB09	104 San Ysidro Rd.	28
ESB11	284 Santa Rosa Ln.	45
ESB13	1980 N Jameson Ln.	32
ESB14	453 Sheffield Dr.	36
ESB15	402 San Ysidro Rd.	41
ESB16m1	2402 Shelby	26
ESB17	2103 Ortega Hill Rd.	29
ESB18	1710 San Leandro Ln.	32
ESB19	2894 Via Real	31
ESB20	3397 Via Real	31
GOL07	4737 Hollister Dr.	29
GOL08	855 Cathedral Oaks Dr.	28
GOL09	Modoc Rd @ Via Senda	42
GOL10	534 Patterson Ave.	31
GOL11	5234 Hollister	28
GOL15	4282 Cathedral Oaks Rd.	30
GOL17	171 Old Mill Rd.	27
GOL21	4970 Cathedral Oaks Rd.	29
GOL22	5012 Calle Real	32
GOL23	649 Evanshire	26
GOL24	4491 Vieja Dr.	37
GOL26	505 Walnut Ln.	31
GOL27	432 Los Verds Dr.	24
GOL35	Honor Farm Rd.	25
GOL36	501 Puente Dr.	31
GOL38	4608 Cathedral Oaks Rd.	38
GOL41	391 Mereda Dr.	38
GOL42	719 Camino Cascade	32
GOL47	879 Embarcadero Del Norte	30
GOL48	6636 Pasado Rd.	26
GOL49	816 Camino Del Sur	29
GOL50	6875 El Colegio Rd.	33
GOL51	6508 El Colegio Rd.	40
SBR04	653 Mission Canyon	33

Appendix A-1

RF EXPOSURE AT THE LEVEL OF THE ANTENNA

PLAN VIEW OF RF EXPOSURE AT THE LEVEL OF THE ANTENNA BASED ON PERCENTAGE OF FCC MAXIMUM PUBLIC EXPOSURE (MPE) LIMIT



Appendix A-2

RF NOTICE SIGN

INFORMATION

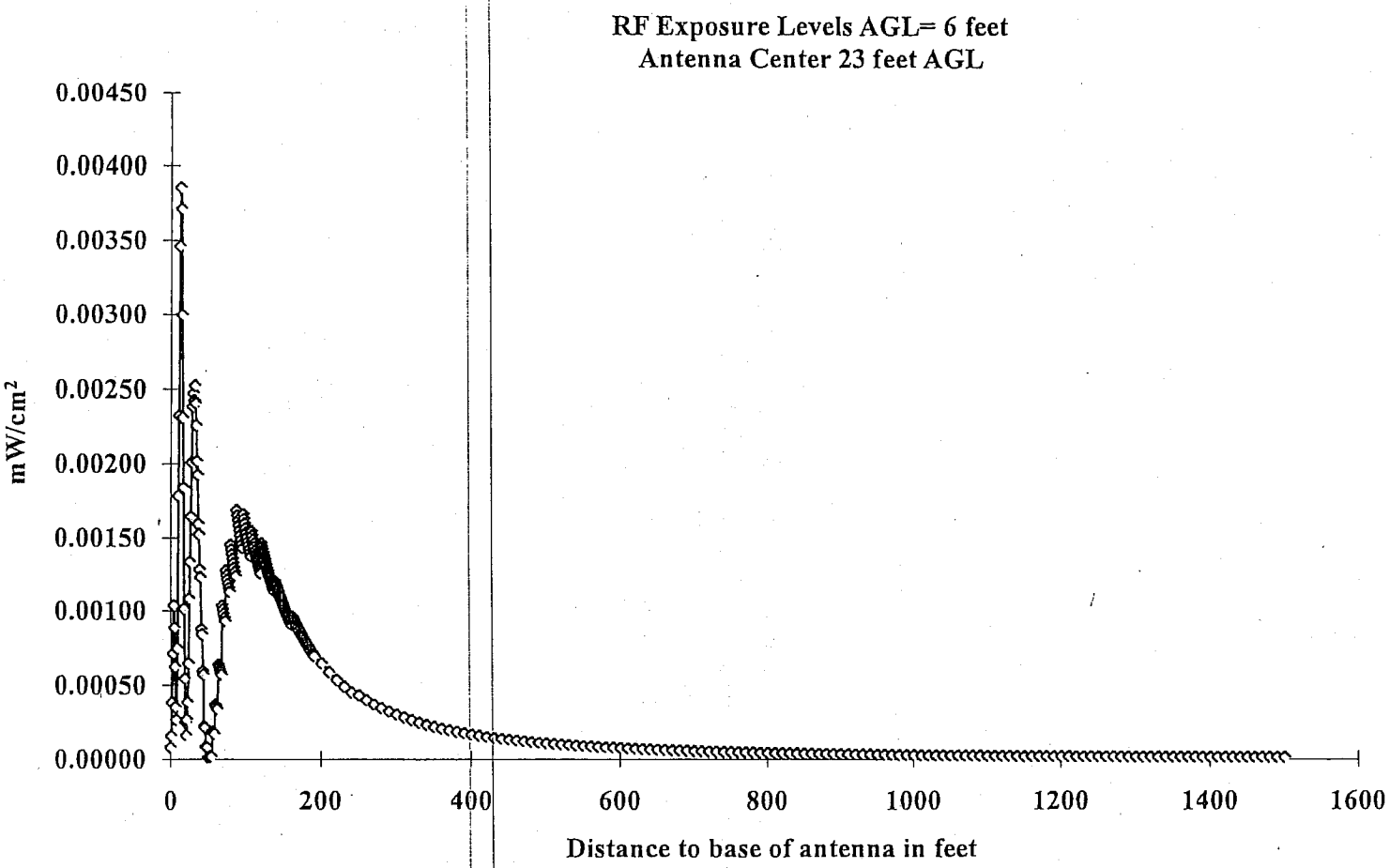
The radio frequency (RF) emissions at this site have been evaluated for potential RF exposure to personnel who may need to work near these antennae.

RF EXPOSURE AT THIS SITE DOES NOT EXCEED THE FCC PUBLIC EXPOSURE STANDARD AND THUS HAS BEEN DETERMINED TO BE SAFE FOR THE GENERAL POPULATION.

Reference: Federal Communications Commission (FCC) Public Exposure Standard. OET Bulletin-65, Edition 97-01, August 1997.

Appendix A-3

Phazar Antenna Corp. Antenna model # AWS360-1710-7-T0-N
Exposure Calculation 6.0 ft Above Grade Level (AGL)
Antenna Center 23.0 ft AGL
ERP 48.6 Watts (AWS)


RF Exposure Levels AGL= 6 feet
Antenna Center 23 feet AGL
0.00450
0.00400
0.00350
0.00300
0.00250
0.00200
0.00150
0.00100
0.00050
0.00000
mW/cm²
0
200
400
600
800
1000
1200
1400
1600
Distance to base of antenna in feet

ARL	17	Max gain (dBd):	4.86	Max exposure:	0.00384906	mW/cm²

Max ERP (W): 48.6 Ant type: Phazar AWS 360-1710-7-T0-N Feet from site: 13

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
0	90.000	-25.88	-30.74	518.16	40.9861	0.00008	0.00797
1	86.634	-22.8563	-27.71634	519.06	82.2247	0.00016	0.01593
2	83.290	-19.0121	-23.87209	521.73	199.2633	0.00038	0.03821
3	79.992	-16.2402	-21.10018	526.17	377.2403	0.00071	0.07113
4	76.759	-14.5202	-19.38018	532.31	560.5553	0.00103	0.10327
5	73.610	-15.0779	-19.93791	540.11	492.9983	0.00088	0.08822
6	70.560	-16.4469	-21.30692	549.49	359.7036	0.00062	0.06219
7	67.620	-18.7595	-23.61952	560.37	211.1952	0.00035	0.03511
8	64.799	-19.7892	-24.64917	572.67	166.6169	0.00027	0.02652
9	62.103	-15.1059	-19.96595	586.29	489.8259	0.00074	0.07439
10	59.534	-11.0898	-15.94978	601.16	1234.9763	0.00178	0.17839
11	57.095	-9.72021	-14.58021	617.17	1692.8379	0.00232	0.23200
12	54.782	-7.75022	-12.61022	634.25	2664.4899	0.00346	0.34577
13	52.595	-7.04081	-11.90081	652.30	3137.2974	0.00385	0.38491
14	50.528	-6.95007	-11.81007	671.25	3203.5320	0.00371	0.37115
15	48.576	-7.62941	-12.48941	691.03	2739.6536	0.00299	0.29950
16	46.736	-8.50976	-13.36976	711.56	2236.9726	0.00231	0.23064
17	45.000	-9.23985	-14.09985	732.79	1890.8261	0.00184	0.18382
18	43.363	-11.586	-16.446	754.65	1101.6302	0.00101	0.10098
19	41.820	-14.0297	-18.88966	777.09	627.5821	0.00054	0.05425
20	40.365	-17.1226	-21.9826	800.06	307.8765	0.00025	0.02511
21	38.991	-18.7401	-23.60007	823.52	212.1433	0.00016	0.01633
22	37.694	-16.337	-21.197	847.43	368.9235	0.00027	0.02682
23	36.469	-14.5211	-19.38115	871.75	560.4301	0.00038	0.03850
24	35.311	-12.0418	-16.90177	896.44	991.8810	0.00064	0.06443
25	34.216	-9.56356	-14.42356	921.48	1755.0145	0.00108	0.10789
26	33.179	-8.41314	-13.27314	946.84	2287.2930	0.00133	0.13319
27	32.196	-7.27007	-12.13007	972.50	2975.9721	0.00164	0.16427
28	31.264	-6.17142	-11.03142	998.42	3832.6082	0.00201	0.20071
29	30.379	-5.20211	-10.06211	1024.60	4790.9855	0.00238	0.23824
30	29.539	-4.82067	-9.680671	1051.01	5230.8127	0.00247	0.24720
31	28.740	-4.68937	-9.549374	1077.63	5391.3672	0.00242	0.24236
32	27.979	-4.30058	-9.160582	1104.45	5896.2796	0.00252	0.25233
33	27.255	-4.30058	-9.160582	1131.46	5896.2796	0.00240	0.24043
34	26.565	-4.37009	-9.230094	1158.64	5802.6570	0.00226	0.22564
35	25.907	-4.65961	-9.519612	1185.98	5428.4402	0.00201	0.20147
36	25.278	-4.65961	-9.519612	1213.47	5428.4402	0.00192	0.19245

ARL	17	Max gain (dBd):	4.86	Max exposure:	0.00384906	mW/cm²

Max ERP (W): 48.6 Ant type: Phazar AWS 360-1710-7-T0-N Feet from site: 13

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
37	24.677	-5.28942	-10.14942	1241.10	4695.6355	0.00159	0.15914
38	24.102	-5.28942	-10.14942	1268.86	4695.6355	0.00152	0.15225
39	23.552	-5.84995	-10.70995	1296.74	4127.0611	0.00128	0.12812
40	23.025	-5.84995	-10.70995	1324.74	4127.0611	0.00123	0.12276
41	22.521	-7.14898	-12.00898	1352.85	3060.1181	0.00087	0.08728
42	22.036	-7.14898	-12.00898	1381.05	3060.1181	0.00084	0.08376
43	21.571	-8.46954	-13.32954	1409.35	2257.7852	0.00059	0.05934
44	21.125	-8.46954	-13.32954	1437.74	2257.7852	0.00057	0.05702
45	20.695	-12.3602	-17.22022	1466.21	921.7530	0.00022	0.02238
46	20.283	-12.3602	-17.22022	1494.76	921.7530	0.00022	0.02154
47	19.885	-16.252	-21.11199	1523.39	376.2163	0.00008	0.00846
48	19.502	-16.252	-21.11199	1552.09	376.2163	0.00008	0.00815
49	19.134	-16.252	-21.11199	1580.85	376.2163	0.00008	0.00786
50	18.778	-25.4966	-30.35658	1609.68	44.7691	0.00001	0.00090
51	18.435	-25.4966	-30.35658	1638.57	44.7691	0.00001	0.00087
52	18.104	-25.4966	-30.35658	1667.51	44.7691	0.00001	0.00084
53	17.784	-22.4546	-27.3146	1696.51	90.1937	0.00002	0.00164
54	17.475	-22.4546	-27.3146	1725.56	90.1937	0.00002	0.00158
55	17.176	-22.4546	-27.3146	1754.65	90.1937	0.00002	0.00153
56	16.887	-11.4187	-16.27874	1783.80	1144.8867	0.00019	0.01878
57	16.607	-11.4187	-16.27874	1812.98	1144.8867	0.00018	0.01818
58	16.336	-11.4187	-16.27874	1842.21	1144.8867	0.00018	0.01761
59	16.074	-11.4187	-16.27874	1871.48	1144.8867	0.00017	0.01706
60	15.819	-7.94152	-12.80152	1900.79	2549.6705	0.00037	0.03684
61	15.573	-7.94152	-12.80152	1930.13	2549.6705	0.00036	0.03573
62	15.333	-7.94152	-12.80152	1959.51	2549.6705	0.00035	0.03466
63	15.101	-7.94152	-12.80152	1988.92	2549.6705	0.00034	0.03365
64	14.876	-5.0511	-9.911097	2018.37	4960.5133	0.00064	0.06357
65	14.657	-5.0511	-9.911097	2047.84	4960.5133	0.00062	0.06175
66	14.444	-5.0511	-9.911097	2077.34	4960.5133	0.00060	0.06001
67	14.237	-5.0511	-9.911097	2106.87	4960.5133	0.00058	0.05834
68	14.036	-5.0511	-9.911097	2136.43	4960.5133	0.00057	0.05673
69	13.841	-2.3328	-7.192795	2166.01	9275.9144	0.00103	0.10321
70	13.650	-2.3328	-7.192795	2195.62	9275.9144	0.00100	0.10045
71	13.465	-2.3328	-7.192795	2225.25	9275.9144	0.00098	0.09779
72	13.285	-2.3328	-7.192795	2254.90	9275.9144	0.00095	0.09523
73	13.109	-2.3328	-7.192795	2284.58	9275.9144	0.00093	0.09278
74	12.938	-0.84236	-5.702363	2314.27	13073.7451	0.00127	0.12743
75	12.771	-0.84236	-5.702363	2343.99	13073.7451	0.00124	0.12422
76	12.609	-0.84236	-5.702363	2373.72	13073.7451	0.00121	0.12112
77	12.450	-0.84236	-5.702363	2403.48	13073.7451	0.00118	0.11814

ARL	17	Max gain (dBd):	4.86	Max exposure:	0.00384906	mW/cm²

Max ERP (W): 48.6 Ant type: Phazar AWS 360-1710-7-T0-N Feet from site: 13

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
78	12.295	-0.84236	-5.702363	2433.25	13073.7451	0.00115	0.11527
79	12.144	-0.84236	-5.702363	2463.04	13073.7451	0.00112	0.11250
80	11.997	0.369469	-4.490531	2492.85	17281.5683	0.00145	0.14517
81	11.853	0.369469	-4.490531	2522.67	17281.5683	0.00142	0.14176
82	11.712	0.369469	-4.490531	2552.51	17281.5683	0.00138	0.13847
83	11.575	0.369469	-4.490531	2582.36	17281.5683	0.00135	0.13528
84	11.441	0.369469	-4.490531	2612.23	17281.5683	0.00132	0.13221
85	11.310	0.369469	-4.490531	2642.11	17281.5683	0.00129	0.12923
86	11.182	0.369469	-4.490531	2672.00	17281.5683	0.00126	0.12636
87	11.056	0.369469	-4.490531	2701.91	17281.5683	0.00124	0.12358
88	10.934	1.818394	-3.041606	2731.83	24125.4611	0.00169	0.16876
89	10.814	1.818394	-3.041606	2761.76	24125.4611	0.00165	0.16512
90	10.697	1.818394	-3.041606	2791.71	24125.4611	0.00162	0.16160
91	10.582	1.818394	-3.041606	2821.66	24125.4611	0.00158	0.15818
92	10.469	1.818394	-3.041606	2851.63	24125.4611	0.00155	0.15488
93	10.359	1.818394	-3.041606	2881.61	24125.4611	0.00152	0.15167
94	10.251	1.818394	-3.041606	2911.60	24125.4611	0.00149	0.14856
95	10.146	1.818394	-3.041606	2941.60	24125.4611	0.00146	0.14555
96	10.042	1.818394	-3.041606	2971.60	24125.4611	0.00143	0.14262
97	9.941	2.558738	-2.301262	3001.62	28609.4900	0.00166	0.16576
98	9.841	2.558738	-2.301262	3031.65	28609.4900	0.00162	0.16250
99	9.744	2.558738	-2.301262	3061.69	28609.4900	0.00159	0.15932
100	9.648	2.558738	-2.301262	3091.73	28609.4900	0.00156	0.15624
101	9.554	2.558738	-2.301262	3121.78	28609.4900	0.00153	0.15325
102	9.462	2.558738	-2.301262	3151.84	28609.4900	0.00150	0.15034
103	9.372	2.558738	-2.301262	3181.91	28609.4900	0.00148	0.14751
104	9.284	2.558738	-2.301262	3211.99	28609.4900	0.00145	0.14476
105	9.197	2.558738	-2.301262	3242.07	28609.4900	0.00142	0.14209
106	9.111	2.558738	-2.301262	3272.17	28609.4900	0.00139	0.13949
107	9.028	2.558738	-2.301262	3302.27	28609.4900	0.00137	0.13696
108	8.945	3.149905	-1.710095	3332.37	32781.3444	0.00154	0.15410
109	8.865	3.149905	-1.710095	3362.48	32781.3444	0.00151	0.15136
110	8.785	3.149905	-1.710095	3392.60	32781.3444	0.00149	0.14868
111	8.707	3.149905	-1.710095	3422.73	32781.3444	0.00146	0.14607
112	8.631	3.149905	-1.710095	3452.86	32781.3444	0.00144	0.14354
113	8.556	3.149905	-1.710095	3483.00	32781.3444	0.00141	0.14106
114	8.482	3.149905	-1.710095	3513.14	32781.3444	0.00139	0.13865
115	8.409	3.149905	-1.710095	3543.29	32781.3444	0.00136	0.13630
116	8.337	3.149905	-1.710095	3573.45	32781.3444	0.00134	0.13401
117	8.267	3.149905	-1.710095	3603.61	32781.3444	0.00132	0.13178
118	8.198	3.149905	-1.710095	3633.77	32781.3444	0.00130	0.12960

ARL 17 Max gain (dBd): 4.86 Max exposure: 0.00384906 mW/cm²

Max ERP (W): 48.6 Ant type: Phazar AWS 360-1710-7-T0-N Feet from site: 13

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
119	8.130	3.149905	-1.710095	3663.94	32781.3444	0.00127	0.12747
120	8.063	3.149905	-1.710095	3694.12	32781.3444	0.00125	0.12540
121	7.997	3.889043	-0.970957	3724.30	38863.3836	0.00146	0.14627
122	7.933	3.889043	-0.970957	3754.49	38863.3836	0.00144	0.14392
123	7.869	3.889043	-0.970957	3784.68	38863.3836	0.00142	0.14164
124	7.806	3.889043	-0.970957	3814.87	38863.3836	0.00139	0.13940
125	7.745	3.889043	-0.970957	3845.07	38863.3836	0.00137	0.13722
126	7.684	3.889043	-0.970957	3875.28	38863.3836	0.00135	0.13509
127	7.624	3.889043	-0.970957	3905.49	38863.3836	0.00133	0.13301
128	7.565	3.889043	-0.970957	3935.70	38863.3836	0.00131	0.13098
129	7.507	3.889043	-0.970957	3965.92	38863.3836	0.00129	0.12899
130	7.450	3.889043	-0.970957	3996.14	38863.3836	0.00127	0.12704
131	7.394	3.889043	-0.970957	4026.36	38863.3836	0.00125	0.12514
132	7.339	3.889043	-0.970957	4056.59	38863.3836	0.00123	0.12329
133	7.284	3.889043	-0.970957	4086.82	38863.3836	0.00121	0.12147
134	7.230	3.889043	-0.970957	4117.06	38863.3836	0.00120	0.11969
135	7.177	3.889043	-0.970957	4147.30	38863.3836	0.00118	0.11795
136	7.125	3.889043	-0.970957	4177.54	38863.3836	0.00116	0.11625
137	7.074	3.889043	-0.970957	4207.79	38863.3836	0.00115	0.11458
138	7.023	3.889043	-0.970957	4238.04	38863.3836	0.00113	0.11295
139	6.973	4.219751	-0.640249	4268.29	41938.3492	0.00120	0.12017
140	6.923	4.219751	-0.640249	4298.54	41938.3492	0.00118	0.11848
141	6.875	4.219751	-0.640249	4328.80	41938.3492	0.00117	0.11683
142	6.827	4.219751	-0.640249	4359.07	41938.3492	0.00115	0.11522
143	6.780	4.219751	-0.640249	4389.33	41938.3492	0.00114	0.11363
144	6.733	4.219751	-0.640249	4419.60	41938.3492	0.00112	0.11208
145	6.687	4.219751	-0.640249	4449.87	41938.3492	0.00111	0.11056
146	6.642	4.219751	-0.640249	4480.15	41938.3492	0.00109	0.10907
147	6.597	4.219751	-0.640249	4510.42	41938.3492	0.00108	0.10761
148	6.553	4.219751	-0.640249	4540.70	41938.3492	0.00106	0.10618
149	6.509	4.219751	-0.640249	4570.98	41938.3492	0.00105	0.10478
150	6.466	4.219751	-0.640249	4601.27	41938.3492	0.00103	0.10341
151	6.423	4.219751	-0.640249	4631.56	41938.3492	0.00102	0.10206
152	6.382	4.219751	-0.640249	4661.85	41938.3492	0.00101	0.10074
153	6.340	4.219751	-0.640249	4692.14	41938.3492	0.00099	0.09944
154	6.299	4.219751	-0.640249	4722.43	41938.3492	0.00098	0.09817
155	6.259	4.219751	-0.640249	4752.73	41938.3492	0.00097	0.09692
156	6.219	4.219751	-0.640249	4783.03	41938.3492	0.00096	0.09570
157	6.180	4.219751	-0.640249	4813.33	41938.3492	0.00094	0.09450
158	6.141	4.219751	-0.640249	4843.64	41938.3492	0.00093	0.09332
159	6.103	4.219751	-0.640249	4873.94	41938.3492	0.00092	0.09216

ARL 17 Max gain (dBd): 4.86 Max exposure: 0.00384906 mW/cm²

Max ERP (W): 48.6 Ant type: Phazar AWS 360-1710-7-T0-N Feet from site: 13

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
160	6.065	4.219751	-0.640249	4904.25	41938.3492	0.00091	0.09102
161	6.028	4.219751	-0.640249	4934.56	41938.3492	0.00090	0.08991
162	5.991	4.559852	-0.300148	4964.87	45354.6122	0.00096	0.09605
163	5.954	4.559852	-0.300148	4995.19	45354.6122	0.00095	0.09489
164	5.918	4.559852	-0.300148	5025.50	45354.6122	0.00094	0.09375
165	5.882	4.559852	-0.300148	5055.82	45354.6122	0.00093	0.09263
166	5.847	4.559852	-0.300148	5086.14	45354.6122	0.00092	0.09152
167	5.812	4.559852	-0.300148	5116.47	45354.6122	0.00090	0.09044
168	5.778	4.559852	-0.300148	5146.79	45354.6122	0.00089	0.08938
169	5.744	4.559852	-0.300148	5177.12	45354.6122	0.00088	0.08834
170	5.711	4.559852	-0.300148	5207.44	45354.6122	0.00087	0.08731
171	5.677	4.559852	-0.300148	5237.77	45354.6122	0.00086	0.08630
172	5.645	4.559852	-0.300148	5268.10	45354.6122	0.00085	0.08531
173	5.612	4.559852	-0.300148	5298.44	45354.6122	0.00084	0.08434
174	5.580	4.559852	-0.300148	5328.77	45354.6122	0.00083	0.08338
175	5.548	4.559852	-0.300148	5359.11	45354.6122	0.00082	0.08244
176	5.517	4.559852	-0.300148	5389.45	45354.6122	0.00082	0.08151
177	5.486	4.559852	-0.300148	5419.79	45354.6122	0.00081	0.08060
178	5.456	4.559852	-0.300148	5450.13	45354.6122	0.00080	0.07971
179	5.425	4.559852	-0.300148	5480.47	45354.6122	0.00079	0.07883
180	5.395	4.559852	-0.300148	5510.81	45354.6122	0.00078	0.07796
181	5.366	4.559852	-0.300148	5541.16	45354.6122	0.00077	0.07711
182	5.336	4.559852	-0.300148	5571.51	45354.6122	0.00076	0.07627
183	5.307	4.559852	-0.300148	5601.86	45354.6122	0.00075	0.07545
184	5.279	4.559852	-0.300148	5632.21	45354.6122	0.00075	0.07464
185	5.250	4.559852	-0.300148	5662.56	45354.6122	0.00074	0.07384
186	5.222	4.559852	-0.300148	5692.91	45354.6122	0.00073	0.07305
187	5.194	4.559852	-0.300148	5723.26	45354.6122	0.00072	0.07228
188	5.167	4.559852	-0.300148	5753.62	45354.6122	0.00072	0.07152
189	5.140	4.559852	-0.300148	5783.98	45354.6122	0.00071	0.07077
190	5.113	4.559852	-0.300148	5814.33	45354.6122	0.00070	0.07004
191	5.086	4.559852	-0.300148	5844.69	45354.6122	0.00069	0.06931
201	4.834	4.679971	-0.180029	6148.35	46626.5588	0.00064	0.06439
211	4.606	4.679971	-0.180029	6452.12	46626.5588	0.00058	0.05847
221	4.399	4.679971	-0.180029	6755.98	46626.5588	0.00053	0.05333
231	4.209	4.679971	-0.180029	7059.92	46626.5588	0.00049	0.04883
241	4.035	4.679971	-0.180029	7363.93	46626.5588	0.00045	0.04489
251	3.875	4.849938	-0.010062	7668.01	48487.5323	0.00043	0.04305
261	3.727	4.849938	-0.010062	7972.14	48487.5323	0.00040	0.03983
271	3.589	4.849938	-0.010062	8276.32	48487.5323	0.00037	0.03695
281	3.462	4.849938	-0.010062	8580.54	48487.5323	0.00034	0.03438

ARL	17	Max gain (dBd):	4.86	Max exposure:	0.00384906	mW/cm²

Max ERP (W): 48.6 Ant type: Phazar AWS 360-1710-7-T0-N Feet from site: 13

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm²	Precent of FCC STD
291	3.343	4.849938	-0.010062	8884.80	48487.5323	0.00032	0.03206
301	3.233	4.849938	-0.010062	9189.10	48487.5323	0.00030	0.02998
311	3.129	4.849938	-0.010062	9493.43	48487.5323	0.00028	0.02809
321	3.032	4.849938	-0.010062	9797.79	48487.5323	0.00026	0.02637
331	2.940	4.810153	-0.049847	10102.18	48045.3723	0.00025	0.02458
341	2.854	4.810153	-0.049847	10406.59	48045.3723	0.00023	0.02316
351	2.773	4.810153	-0.049847	10711.02	48045.3723	0.00022	0.02186
361	2.696	4.810153	-0.049847	11015.47	48045.3723	0.00021	0.02067
371	2.624	4.810153	-0.049847	11319.95	48045.3723	0.00020	0.01957
381	2.555	4.810153	-0.049847	11624.43	48045.3723	0.00019	0.01856
391	2.490	4.810153	-0.049847	11928.94	48045.3723	0.00018	0.01763
401	2.428	4.810153	-0.049847	12233.46	48045.3723	0.00017	0.01676
411	2.369	4.810153	-0.049847	12537.99	48045.3723	0.00016	0.01595
421	2.312	4.810153	-0.049847	12842.54	48045.3723	0.00015	0.01521
431	2.259	4.810153	-0.049847	13147.09	48045.3723	0.00015	0.01451
441	2.208	4.810153	-0.049847	13451.66	48045.3723	0.00014	0.01386
451	2.159	4.810153	-0.049847	13756.24	48045.3723	0.00013	0.01325
461	2.112	4.810153	-0.049847	14060.83	48045.3723	0.00013	0.01269
471	2.067	4.810153	-0.049847	14365.43	48045.3723	0.00012	0.01215
481	2.024	4.810153	-0.049847	14670.03	48045.3723	0.00012	0.01165
491	1.983	4.780013	-0.079987	14974.65	47713.0981	0.00011	0.01111
501	1.943	4.780013	-0.079987	15279.27	47713.0981	0.00011	0.01067
511	1.905	4.780013	-0.079987	15583.90	47713.0981	0.00010	0.01026
521	1.869	4.780013	-0.079987	15888.53	47713.0981	0.00010	0.00987
531	1.834	4.780013	-0.079987	16193.17	47713.0981	0.00009	0.00950
541	1.800	4.780013	-0.079987	16497.82	47713.0981	0.00009	0.00915
551	1.767	4.780013	-0.079987	16802.47	47713.0981	0.00009	0.00882
561	1.736	4.780013	-0.079987	17107.13	47713.0981	0.00009	0.00851
571	1.705	4.780013	-0.079987	17411.79	47713.0981	0.00008	0.00822
581	1.676	4.780013	-0.079987	17716.46	47713.0981	0.00008	0.00794
591	1.648	4.780013	-0.079987	18021.13	47713.0981	0.00008	0.00767
601	1.620	4.780013	-0.079987	18325.81	47713.0981	0.00007	0.00742
611	1.594	4.780013	-0.079987	18630.49	47713.0981	0.00007	0.00718
621	1.568	4.780013	-0.079987	18935.17	47713.0981	0.00007	0.00695
631	1.543	4.780013	-0.079987	19239.86	47713.0981	0.00007	0.00673
641	1.519	4.780013	-0.079987	19544.55	47713.0981	0.00007	0.00652
651	1.496	4.780013	-0.079987	19849.24	47713.0981	0.00006	0.00632
661	1.473	4.780013	-0.079987	20153.94	47713.0981	0.00006	0.00613
671	1.451	4.780013	-0.079987	20458.64	47713.0981	0.00006	0.00595
681	1.430	4.780013	-0.079987	20763.35	47713.0981	0.00006	0.00578
691	1.409	4.780013	-0.079987	21068.05	47713.0981	0.00006	0.00561

ARL 17 Max gain (dBd): 4.86 Max exposure: 0.00384906 mW/cm^2

Max ERP (W): 48.6 Ant type: Phazar AWS 360-1710-7-T0-N Feet from site: 13

RF Exposure Level

Feet to Ant. base	Depress angle	Antenna gain	dB from max ERP	Prop dist in cm	Act ERP in mW	Level mW/cm^2	Precent of FCC STD
701	1.389	4.780013	-0.079987	21372.76	47713.0981	0.00005	0.00545
711	1.370	4.780013	-0.079987	21677.47	47713.0981	0.00005	0.00530
721	1.351	4.780013	-0.079987	21982.19	47713.0981	0.00005	0.00515
731	1.332	4.780013	-0.079987	22286.90	47713.0981	0.00005	0.00501
741	1.314	4.780013	-0.079987	22591.62	47713.0981	0.00005	0.00488
751	1.297	4.780013	-0.079987	22896.34	47713.0981	0.00005	0.00475
761	1.280	4.780013	-0.079987	23201.07	47713.0981	0.00005	0.00463
771	1.263	4.780013	-0.079987	23505.79	47713.0981	0.00005	0.00451
781	1.247	4.780013	-0.079987	23810.52	47713.0981	0.00004	0.00439
791	1.231	4.780013	-0.079987	24115.25	47713.0981	0.00004	0.00428
801	1.216	4.780013	-0.079987	24419.98	47713.0981	0.00004	0.00418
811	1.201	4.780013	-0.079987	24724.71	47713.0981	0.00004	0.00407
821	1.186	4.780013	-0.079987	25029.44	47713.0981	0.00004	0.00398
831	1.172	4.780013	-0.079987	25334.18	47713.0981	0.00004	0.00388
841	1.158	4.780013	-0.079987	25638.92	47713.0981	0.00004	0.00379
851	1.144	4.780013	-0.079987	25943.65	47713.0981	0.00004	0.00370
861	1.131	4.780013	-0.079987	26248.39	47713.0981	0.00004	0.00362
871	1.118	4.780013	-0.079987	26553.14	47713.0981	0.00004	0.00353
881	1.105	4.780013	-0.079987	26857.88	47713.0981	0.00003	0.00345
891	1.093	4.780013	-0.079987	27162.62	47713.0981	0.00003	0.00338
901	1.081	4.780013	-0.079987	27467.37	47713.0981	0.00003	0.00330
911	1.069	4.780013	-0.079987	27772.11	47713.0981	0.00003	0.00323
921	1.057	4.780013	-0.079987	28076.86	47713.0981	0.00003	0.00316
931	1.046	4.780013	-0.079987	28381.61	47713.0981	0.00003	0.00309
941	1.035	4.780013	-0.079987	28686.36	47713.0981	0.00003	0.00303
951	1.024	4.780013	-0.079987	28991.11	47713.0981	0.00003	0.00296
961	1.013	4.780013	-0.079987	29295.86	47713.0981	0.00003	0.00290
971	1.003	4.780013	-0.079987	29600.62	47713.0981	0.00003	0.00284
981	0.993	4.590013	-0.269987	29905.37	45670.6931	0.00003	0.00267
991	0.983	4.590013	-0.269987	30210.12	45670.6931	0.00003	0.00261
1001	0.973	4.590013	-0.269987	30514.88	45670.6931	0.00003	0.00256
1011	0.963	4.590013	-0.269987	30819.64	45670.6931	0.00003	0.00251
1021	0.954	4.590013	-0.269987	31124.39	45670.6931	0.00002	0.00246
1031	0.945	4.590013	-0.269987	31429.15	45670.6931	0.00002	0.00241

STATEMENT OF EXPERIENCE

Jerrold Talmadge Bushberg, Ph.D., DABMP, DABSNM
(800) 760-8414 jbushberg@hampc.com

Dr. Jerrold Bushberg has performed health and safety analysis for RF & ELF transmissions systems since 1978 and is an expert in both health physics and medical physics. The scientific discipline of Health Physics is devoted to radiation protection, which, among other things, involves providing analysis of radiation exposure conditions, biological effects research, regulations and standards as well as recommendations regarding the use and safety of ionizing and non-ionizing radiation. In addition, Dr. Bushberg has extensive experience and lectures on several related topics including medical physics, radiation protection, (ionizing and non-ionizing), radiation biology, the science of risk assessment and effective risk communication in the public sector.

Dr. Bushberg's doctoral dissertation at Purdue University was on various aspects of the biological effects of microwave radiation. He has maintained a strong professional involvement in this subject and has served as consultant or appeared as an expert witness on this subject to a wide variety of organizations/institutions including, local governments, school districts, city planning departments, telecommunications companies, the California Public Utilities Commission, national news organizations, and the U.S. Congress. In addition, his consultation services have included detailed computer based modeling of RF exposures as well as on-site safety inspections and RF & ELF environmental field measurements of numerous transmission facilities in order to determine their compliance with FCC and other safety regulations. The consultation services provided by Dr. Bushberg are based on his professional judgement as an independent scientist, however they are not intended to necessarily represent the views of any other organization.

Dr. Bushberg is a member of the main scientific body of International Committee on Electromagnetic Safety (ICES) which reviews and evaluates the scientific literature on the biological effects of non-ionizing electromagnetic radiation and establishes exposure standards. He also serves on the ICES Risk Assessment Working Group that is responsible for evaluating and characterizing the risks of non-ionizing electromagnetic radiation. Dr. Bushberg was appointed and is serving as a member of the main scientific council of the National Council on Radiation Protection and Measurement's (NCRP). He is also a Scientific Vice-President of the NCRP, a member of the NCRP Board of Directors and chairs its committee on Radiation Protection in Medicine. In addition, Dr. Bushberg is a member of NCRP's scientific advisory committee on Non-ionizing Radiation Safety. The NCRP is the nation's preeminent scientific radiation protection organization, chartered by Congress to evaluate and provide expert consultation on a wide variety of radiological health issues. The current FCC RF exposure safety standards are based in large part on the recommendations of the NCRP. Dr. Bushberg was elected to the International Engineering in Medicine and Biology Society Committee on Man and Radiation (COMAR) which has as its primary area of responsibility the examination and interpreting the biological effects of non-ionizing electromagnetic energy and presenting its findings in an authoritative and professional manner. Dr. Bushberg is also a member of a six person U.S. expert delegation to the international scientific community on Scientific and Technical Issues for Mobile Communication Systems established by the Federal Communications Commission.

Dr. Bushberg is a full member of the Bioelectromagnetics Society, the Health Physics Society and the Radiation Research Society. Dr. Bushberg received both a Masters of Science and Ph.D. from the Department of Bionucleonics at Purdue University. Dr. Bushberg is certified by several national professional boards with specific sub-specialty certification in radiation protection and medical physics. Prior to coming to California, Dr. Bushberg was on the faculty of Yale University School of Medicine.

NextG Networks

EMPOWERING NEXT GENERATION WIRELESS NETWORKS

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November 14, 2009

COUNTY OF SANTA BARBARA
Attn: David Ward, Deputy Director
Santa Barbara County Planning and Development
123 East Anapamu Street
Santa Barbara CA 93101

re: NextG Networks of California, Inc. -- FCC Certification of Equipment

Dear Mr. Ward:

I am writing to follow up on the inquiry regarding the certification that NextG's equipment will not cause interference with other electrical devices. As noted in prior submissions, NextG's equipment is extremely low powered and operates at less than one half of 1% of the applicable levels. Additionally, NextG's equipment has been "Type Certified" by the FCC and as such, has been independently evaluated to operate within applicable legal parameters, which includes rigorous interference testing. In FCC Report and Order Docket 98-68, the FCC adopted rules for the establishment of Telecommunication Certification Bodies, which in turn, certify equipment to fall within FCC standards pursuant to Parts 2 and 68 of the FCC's rules.[1] A copy of the certification for the equipment that NextG is deploying in the County is enclosed. Please feel free to share this information with anyone that may inquire about NextG's application.

Very truly yours,

Patrick S. Ryan
VP, Government Relations & Regulatory Affairs

Enclosure: TCB Authorization, BCR-IONM17P

Copies: Michael Munoz, Esq. (County Counsel's Office)
Michael Ledbetter, Esq (County Counsel's Office)
Megan Lowery (County P&E)

[1] 47 CFR § § 2.960, 2.962, 68.160 and 68.162. Also see ET Docket 98-68 (December 17, 1998), available at: http://www.fcc.gov/oet/dockets/gen98-68/.

TCB

GRANT OF EQUIPMENT AUTHORIZATION

Certification

Issued Under the Authority of the

Federal Communications Commission

By:

TCB

Timco Engineering, Inc.
849 NW State Road 45
P.O. Box 370,
Newberry, FL 32669

Date of Grant: 10/29/2007

Application Dated: 10/26/2007

Andrew Wireless Innovations Group
108 Rand Park Drive
Garner, NC 27529

Attention: Michael Williamson , Product Manager

NOT TRANSFERABLE

EQUIPMENT AUTHORIZATION is hereby issued to the named GRANTEE, and is VALID ONLY for the equipment identified hereon for use under the Commission's Rules and Regulations listed below.

FCC IDENTIFIER: [redacted]
Name of Grantee: [redacted]
Equipment Class: Amplifier
Notes: HIGH POWER, MULTI-OPERATOR REMOTE OPTICAL SYSTEM

Grant Notes	FCC Rule Parts	Frequency Range (MHz)	Output Watts	Frequency Tolerance	Emission Designator
	27	2110.0 - 2155.0	21.0	Amp	F9W

Power listed is conducted. This approval is only for the Remote unit of a fiber optic distribution system. The antenna(s) used for this transmitter must be fixed-mounted on a permanent structure providing a separation distance of at least 20cm from all persons during normal operation. The maximum radiated output power must satisfy the MPE Categorical Exclusion Requirements of §2.1091. RF exposure compliance may need to be addressed at the time of licensing, as required by the responsible FCC Bureau(s), including antenna co-location requirements of §1.1307(b)(3). Users and installers must be provided with appropriate antenna installation instructions and device operating conditions, including antenna co-location requirements of §1.1307(b)(3), for satisfying RF exposure compliance.