



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: Planning &  
Development  
Department No.: 053  
For Agenda Of: 9/21/10  
Placement: Departmental  
Estimated Tme: 0.4 hours  
Continued Item: Yes  
If Yes, date from: 3/16/10; 8/3/10  
Vote Required: Majority

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**TO:** Board of Supervisors

**FROM:** Department Glenn Russell Ph.D., Director, 568-2085  
Director Planning and Development  
Contact Info: Dianne Black, Development Services Director, 568-2086  
Development Review Division-South County

**SUBJECT:** NextG Cellular Antenna ESB14 Appeal  
10APL-00000-00006; Right-of-Way of Sheffield Drive

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: N/A

**Other Concurrence:**

As to form: N/A

**Recommended Actions:**

That the Board of Supervisors consider the NextG appeal, (Case No. 10APL-00000-00006) of the Montecito Planning Commission's January 27, 2010 denial of the NextG Cellular Antenna ESB14 permit, Case No. 09LUP-00000-00319 located in the public right of way of Sheffield Drive (adjacent to APN 007-460-001) in Montecito, First Supervisorial District, and take either of the following actions.

***Staff Recommended Action:***

1. Uphold the appeal, Case No. 10APL-00000-00006, thereby overturning the Montecito Planning Commission's denial of 09LUP-00000-00319;
2. Make the required findings for approval of Case No. 09LUP-00000-00319, included in Attachment A-1 of this Board Letter;
3. Accept the exemption to CEQA described in the Notice of Exemption prepared and adopted by the Public Utilities Commission, the lead agency, as adequate for this project pursuant to sections 15061(b)(3), 15301(b), 15301(c), 15302(c), and 15304(f) of the CEQA Guidelines included as Attachment B-1; and

4. Grant *de novo* approval of Case No. 09LUP-00000-00319 as revised, subject to the conditions of approval of the permit, included as Attachment C-1.

***Alternative Action For Underground Vault with Retaining Wall:***

1. Uphold the appeal, Case No. 10APL-00000-00006, thereby overturning the Montecito Planning Commission's denial of 09LUP-00000-00319;
2. Make the required findings for approval of Case No. 09LUP-00000-00319, included in Attachment A-2 of this Board Letter;
3. Accept the exemptions to CEQA described in the Notices of Exemption prepared and adopted by the Public Utilities Commission, the lead agency, as adequate for this project pursuant to sections 15061(b)(3), 15301(b), 15301(c), 15302(c), 15303, and 15304(f) of the CEQA Guidelines included as Attachments B-1 and B-2; and
4. Grant *de novo* approval of Case No. 09LUP-00000-00319, as revised, subject to the conditions of approval of the permit, included as Attachment C-2.

Refer back to staff for additional analysis if the Board of Supervisors takes other than the recommended action.

**Summary Text:**

The subject appeal was initially brought before your Board on March 16, 2010. Upon consideration of the project details, your Board continued the item and "directed staff to conduct a 'significant gap' analysis, including thorough use of a 3rd-party consultant, an analysis of alternative sites, if needed and to return to the Board as appropriate with draft findings for denial."<sup>1</sup>

Staff conducted the requested analysis and returned on August 3, 2010 with findings for denial based on the objectionable aesthetics of the facility design which proposed to mount equipment directly on the pole within plain sight of public views in Montecito which is a community esteemed for its semi-rural character including the semi-rural character of the roadways. Staff's research and analysis concluded that because NextG could feasibly underground the highly visible equipment in an underground vault as it had in the past in other locations, the proposed project design did not meet the zoning standards, requiring that support facilities be located underground, if feasible.

At the August 3, 2010 hearing, NextG offered to investigate undergrounding the equipment box at this location. As a result, the project was continued with direction to return with the revisions discussed.

NextG submitted revised plans for the proposed underground vault to house the equipment. The equipment vault would be approximately 3'x 5'x 3' and would be flush with the ground. However, in addition to the vault itself, two 2'x 4'x 3' air vents would also need to be installed on either side of the vault to provide necessary ventilation for the equipment. A foot of gravel base would also be installed around the vault to prevent sinking and to ensure the vault remains level over time. The total footprint of the vault with gravel base and air vents combined would result in a ground disturbance and minor vegetation removal of a 4'x 14' area in the utility easement in the road right-of-way. Additionally,

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<sup>1</sup> Board of Supervisors March 16, 2010 Action Summary, page 17.

because of the existing grade, a retaining wall would be required to create the necessary space for the vault at this location and ruderal groundcover would need to be removed from the right of way, as demonstrated in the photo simulation included in Attachment D-2. . The retaining wall would extend 14' in length, would be 4' tall and would be clad in sandstone. This design would conceal the equipment box by undergrounding the major components of the facility and painting the top of the vault brown to blend in with the existing ground plane.

However, although the facility equipment would be placed in an underground vault, the retaining wall needed to allow for that installation would add a new visible linear feature in the road right of way. As discussed above, the retaining wall would be approximately 4' tall and would extend 14' in length. Your Board could conclude that the retaining wall design is incompatible with the semi-rural character of the roadway. NextG has offered an alternative design which would mount the equipment on the west side of the pole facing away from the roadway thereby lessening its public visibility. The pole-mounted facility design, would be comprised of a 26-inch omni antenna and a 32"x6"x6" equipment box painted brown to match the pole. Given the infeasibility of undergrounding without a retaining wall, this design may be found in compliance with the goals and policies of the Montecito Community Plan and conforming to all applicable regulations of the MLUDC. Findings of approval to support this conclusion are included in Attachment A-1. Alternatively, should your Board conclude the revised project with an underground vault and retaining wall is visually preferred, findings of approval to support this conclusion are included in Attachment A-2.

**Performance Measure:**

N/A

**Fiscal and Facilities Impacts:**

Budgeted: Yes

**Fiscal Analysis:**

The costs for processing appeals are partially offset through payment of a fixed appeal fee of \$643 (\$500 of which covers P&D costs). The total estimated cost to process this appeal is approximately \$7,280.00 (40 staff hours). These funds are budgeted in the Permitting and Compliance Program of the Development Review South Division, as shown on page D-330 of the adopted 2010/2011 fiscal year budget.

**Staffing Impacts:**

None.

**Special Instructions:**

None.

**Attachments:**

A-1) Findings for Pole Mount Design

- A-2) Findings for Retaining Wall Design
- B-1) Notice of Exemption, dated July 29, 2009
- B-2) Notice of Exemption, dated August 19, 2010
- C-1) Permit, with Conditions of Approval for Pole Mount Design
- C-2) Permit, with Conditions of Approval for Retaining Wall Design
- D-1) Project Plans and Photosimulations for Pole Mount Design
- D-2) Project Plans and Photosimulations for Retaining Wall Design
- E) Bushberg Emissions Report, dated April 29, 2009
- F) NextG Letter, dated August 24, 2010

**Authored by:**

Megan Lowery, Planner II

**cc:**

Anne Almy, Planning Supervisor

## ATTACHMENT A-1: 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 as Attachment B-2.

### **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).*

The proposed project would include mounting a single 26-inch omni whip antenna on a bracket attached to the existing utility pole and mounting a 32"x6"x6" equipment cabinet on the pole itself facing away from the public roadway minimizing its visibility. The orientation of the equipment box would minimize its visibility to the public. The facility would be entirely mounted on the pole and therefore would not require any ground disturbance or vegetation removal. Additionally, all components of the facility are located outside of designated sensitive resource areas. This design would reduce the visibility of the facility by the public by utilizing existing infrastructure for the antenna support and utilizing equipment that meets the "very small facility" criteria. The minimalistic design preserves the existing semirural character of the roadway and surrounding area. Lastly, the facility would operate well within the Federal health and safety standards established by the Federal Communications Commission. With these features, the proposed project would be in conformance with all applicable provisions of the MLUDC, 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 therefore this finding can be made.

**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 antenna and equipment 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.***

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. Furthermore, the antenna and equipment 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 would be mounted on an existing operational utility pole facing away from the public roadway minimizing its visibility from public view and blending it with the existing infrastructure. Furthermore, since all of the facility components would be mounted on the pole, the project design does not require any ground disturbance, including vegetation removal or the use of retaining walls. Therefore the facility has been located so as to minimize its visibility from public view and this finding can be made.

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

The proposed antenna design uses a 26-inch omni whip antenna that would be painted brown and mounted on a bracket attached to the existing utility pole and an equipment cabinet that meets the “very small facility” criteria mounted on the side of the pole away from the public roadway. Mounting the equipment and antenna on the existing pole would effectively blend the facility with the existing utility infrastructure. 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 (Additional development standards for telecommunications facilities) above.***

***Exemption provision Section 35.444.010.D.2 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.***

***Development Standard 2.d (MLUDC Section 35.444.010.2.d): Support facilities (e.g., vaults, equipment rooms, utilities, equipment enclosures) shall be located underground, if feasible, if they would otherwise be visible from public viewing areas (e.g., public road, trails, recreational areas).***

The telecommunications facility development standards require facilities be designed to protect the public safety; utilize existing infrastructure; reduce visibility from public viewing areas; preserve ridgelines, existing vegetation, historic structures, environmentally sensitive habitats, prime agricultural soils, etc. As discussed above, the proposed facility would be collocated on an existing operational utility pole in the road right of way. This design is consistent with the development standards since the facility is collocated, no sensitive resources (including

biological habitats, historic structures, prime agricultural soils, etc.) are impacted, and the facility would be secured from public tampering and would operate within the FCC public health and safety standards.

Lastly, the project qualifies for an exemption from Development standard 2.d, above, which requires support facilities (i.e. cabinets and shelters) be undergrounded, if feasible, if they would otherwise be visible from public viewing areas (e.g., public roads, trails, recreational areas). Undergrounding the equipment is technologically feasible at this location, but it would require the installation of a retaining wall that would add an objectionable new visible linear feature in the road right of way which would be more visually intrusive than the equipment mounted on the inside of the pole. Therefore, the project qualifies for an exemption from the Telecommunications Development Standard 2.d 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-00000-00319.<sup>2</sup> The report concludes that RF exposure from the proposed telecommunications facility would be less than 0.3% of the applicable FCC public exposure limit at ground level (approximately 26 feet) and therefore the facility is well within the FCC's health and safety limits. Therefore this finding can be made.

**2.3 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 Sheffield Drive, to which access will be provided. Therefore this finding can be made.

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<sup>2</sup> See Attachment E.

## ATTACHMENT A-2: FINDINGS

### **1.0 CEQA**

#### **1.1 CEQA Guidelines Exemption Findings**

**1.1.1** The proposed project was found to be exempt from environmental review pursuant to Sections 15061(b)(3), 15301(b), 15301(c), 15302(c), 15303 and 15304(f) of the Guidelines for Implementation of the California Environmental Quality Act (CEQA) by the California Public Utilities Commission (CPUC). Please see the Notices of Exemption, prepared by the CPUC on July 20, 2009 and August 19, 2010 included as Attachment B-1 and B-2.

### **2.0 MONTECITO LAND USE DEVELOPMENT CODE**

#### **2.1 Land Use Permit Findings (Sec. 35.472.110.F.1)**

**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 would include mounting a single 26-inch omni whip antenna on a bracket attached to the existing utility pole and vaulting the support equipment. The vault would be approximately 3 ft. x 5 ft. and would have two 2 ft. x 4 ft. vents on either side, installed at grade in the right-of-way. Due to the existing grade a retaining wall behind the equipment vault would be required, and would be approximately 4 ft. tall and 14 ft. long clad in sandstone. The construction of the facility and retaining wall would require minor grading and vegetation removal of non-native plants. The oak trees nearby are not proposed to be disturbed by the facility installation; however conditions of approval would ensure tree protection measures are in place during construction activities. Additionally, all components of the facility are located outside of designated sensitive resource areas. This design would reduce the visibility of the facility by the public to the maximum extent feasible by utilizing existing infrastructure for the antenna support and eliminating the support equipment from view by placing it underground. The minimalistic design preserves the existing semirural character of the roadway and surrounding area. Lastly, the facility would operate well within the Federal health and safety standards established by the Federal Communications Commission. With these features, the proposed project would be in conformance with all applicable provisions of the MLUDC, 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 therefore this finding can be made.

**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 antenna would be mounted was legally erected and does not constitute a zoning violation. Additionally, the provisions for telecommunications facilities in Section 35.444.010.D.1.a.1 of the MLUDC specifically states that “underground equipment (e.g., equipment cabinet) may be located within the setback area and rights-of-way provided that no portion of the facility shall obstruct existing or proposed sidewalks, trails, and vehicular ingress or egress.” The proposed vault would be installed at grade and therefore would not obstruct access at this location. Therefore this finding can be made.

## **2.2 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.***

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

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

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

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

The proposed antenna design uses a 26-inch omni whip antenna that would be painted brown and mounted on a bracket attached to the existing utility pole. Mounting the antenna on the existing pole would effectively blend the antenna with the existing utility infrastructure. Furthermore, the support equipment would be placed in an underground vault and would therefore not be visible in the existing environment. 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 (Additional development standards for telecommunications facilities) above.***

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

development standard requirements and therefore no exemption is required from the review authority 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-00000-00319.<sup>3</sup> The report concludes that RF exposure from the proposed telecommunications facility would be less than 0.3% of the applicable FCC public exposure limit at ground level (approximately 26 feet) and therefore the facility is well within the FCC's health and safety limits. Therefore this finding can be made.

**2.3 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 antenna would be mounted on an existing operational utility pole in the public right of way along Sheffield Drive, to which access will be provided. Therefore this finding can be made.

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<sup>3</sup> See Attachment E.

**ATTACHMENT B-1: NOTICE OF EXEMPTION**

**ATTACHMENT B-2: NOTICE OF EXEMPTION**

**ATTACHMENT C-1: PERMIT WITH CONDITIONS OF APPROVAL**

**ATTACHMENT C-2: PERMIT WITH CONDITIONS OF APPROVAL**

**ATTACHMENT D-1: PROJECT PLANS AND PHOTOSIMUATIONS**

**ATTACHMENT D-2: PROJECT PLANS AND PHOTOSIMUATIONS**



**ATTACHMENT E: EMISSIONS REPORT**

**ATTACHMENT F: NEXTG LETTER**