



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: 8/3/10
Placement: Departmental Letter
Estimated Tme: 0.4 hours
Continued Item: Yes
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn Russell Ph.D., Director, 568-2085
Director Planning and Development
Contact Info: Dave Ward, Deputy Director, 568-2520
Development Review Division-South County
SUBJECT: NextG Cellular Antenna ESB08 Appeal
10APL-00000-00004; Right-of-Way of Olive Mill Road

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

As to form: N/A

Recommended Actions:

That the Board of Supervisors continue its consideration of the NextG appeal (Case No. 10APL-00000-00004) of the Montecito Planning Commission's January 27, 2010 denial of the NextG Cellular Antenna ESB08 permit, Case No. 09LUP-00000-00317 located in the public right of way of Olive Mill Road (adjacent to APN 009-640-001)¹ in Montecito, First Supervisorial District, and take the following actions:

1. Deny the appeal, Case No. 10APL-00000-00004, thereby upholding the Montecito Planning Commission's denial of 09LUP-00000-00317;
2. Make the required findings for denial of the project, included in Attachment A of this Board Letter;
3. Determine the project is exempt from CEQA pursuant to CEQA Guidelines Section 15270; and
4. Deny the project, 09LUP-00000-00317.

Summary Text:

¹ The adjacent parcel was incorrectly referenced previously in the approved permit and all previous hearing documents to the MPC and to the BOS as APN 009-130-015 and is corrected herein.

The project on appeal, and for consideration by your Board, is 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 5-E-1. The unmanned wireless facility would include one 26-inch whip omni antenna and an equipment box measuring 32"x6"x6". The antenna is omnidirectional and would be mounted along with the equipment box on an existing wood pole in the public right of way. On March 16, 2010 your Board reviewed the project on appeal, 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."²

The attached letter from County's contracted telecommunications consultant, Attachment C, addresses the functionality of Distributed Antenna Systems, like the one proposed here by Next G. The letter states that:

- DAS nodes are not physically or electrically interconnected with other DAS nodes in a manner that would prevent one node from operating in the absence of any other; and
- Even if NextG were not permitted to install all of the DAS nodes that it has proposed, the remaining nodes and its fiber optic network would still function.

Coverage

As part of the project application, NextG provided the County with a network-wide coverage map. The map demonstrates the potential coverage provided by the NextG network with all of the NextG sites³ in the County's jurisdiction simultaneously activated. This information is helpful in understanding the intended extent of the network coverage, but does not provide an understanding of the range of coverage of each individual site or the extent of the gaps each site individually fills. The coverage map also identifies sites outside of the County's jurisdiction, but does not show the coverage they would contribute to those in County's jurisdiction. Lastly, the NextG sites would provide service for Metro PCS yet the map does not identify existing Metro PCS coverage provided by sites not in the DAS network (i.e. macrosites).⁴

At your Board's direction, staff sent NextG a letter dated March 29, 2010 requesting NextG provide any information demonstrating their need for service, specifically if any significant gaps in service would occur if any of the individual sites were not approved. NextG responded to the County's request with a letter dated March 30, 2010 (included as Attachment B), in which they declined to provide any additional information regarding the coverage analysis.

The Telecommunications Act of 1996 does not guarantee wireless service providers coverage that is entirely free of even small "dead spots." However, local jurisdictions cannot prevent wireless carriers from filling a "significant gap" in coverage. To determine whether the lacking service resulting from a denial of a single site would qualify as a "significant gap" in service would require a greater understanding of the existing coverage in the area and the coverage that would be provided by the

² Board of Supervisors March 16, 2010 Action Summary, page 17.

³"All of the sites proposed" were those sites that were initially applied for by NextG in August-September 2009 in the County's jurisdiction. Some of these sites were subsequently relocated during the permitting process.

⁴ Although Santa Barbara County does not have any permits for Metro PCS facilities in the South County, it is unknown whether there are existing Metro PCS sites in adjacent jurisdictions such as City of Santa Barbara, Goleta, or Carpinteria, or in areas outside of local jurisdiction such as National Forest Lands.

proposed site. Since NextG did not provide any site specific coverage information, the County cannot ascertain the significance of the coverage needed. Therefore, it is unknown whether a “significant gap” in coverage would result without the proposed site along Olive Mill Road (ESB08).

Staff consulted with Mr. Jonathan Kramer, an expert in the telecommunications industry under contract with the County, regarding the coverage analysis. Mr. Kramer reviewed the network-wide coverage maps provided by NextG and concurred that without additional site-specific information, including existing information regarding Metro PCS coverage aside from the NextG DAS network, a determination of significance in gap could not be determined for the project on appeal (see letter dated July 16, 2010, Attachment C).

However, the County’s land use codes do not require applicants to demonstrate that they are filling a “significant gap” in wireless coverage through the “least intrusive means.” Rather, this “significant gap” analysis is part of a federal limit on County’s zoning authority over personal wireless service facilities. (47 USC § 332(c)(7).) The proposed denial is based solely on applicable state and local law, and not on the Applicant’s failure to demonstrate a “significant gap” in coverage.

Alternatives Analysis

At the March 16, 2010 hearing the Board requested staff analyze alternatives for the project on appeal. Staff looked at two components in reviewing alternatives: 1) alternative designs, and 2) alternative siting.

The County’s preferences in regards to both design and siting of telecommunications facilities are thoroughly laid out in the “development standards” for telecommunications facilities, found in Sections 35-144F.4.1, 35-144F.4.2 and 35-144F.4.3. These development standards apply to all telecommunications facilities, including Tiers 1-4. Exceptions to these standards may only be made for development standards in Sections 35-144F.4.2 and 35-144F.4.3:

“...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.”

Exemption from one or more development standards in Section 35-144F.4.3 requires the approval of a Conditional Use Permit.

To ensure compliance with these development standards, the review authority must also make the additional finding specified in Section 35-144F.7.4 explicitly requiring the review authority to find that *“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 telecommunication facilities) above.”* This additional finding is one of numerous additional findings required for all telecommunications facilities listed in Section 35-144F.7.

County's land use codes provide that Telecommunication facilities shall comply with numerous development standards. (County Land Use & Development Code § 35.44.010.D, Montecito Land Use & Development Code §35.444.010.D. and Coastal Zoning Ordinance §35-144F.4.) and that approval of applications to develop telecommunications facilities requires numerous findings in addition to those generally required for Land Use Permits and Coastal Development Permits. (County Land Use & Development Code § 35.44.010.G; Montecito Land Use & Development Code §35.444.010.G and Coastal Zoning Ordinance §35-144F.7.) Should any project lack the ability to meet these development standards or any of the required findings, including those generally required for Land Use Permits and Coastal Development Permits, the review authority may deny the project.

Alternatives Analysis: Design

The project on appeal proposes to mount a new wireless telecommunications facility directly on an existing utility pole. The facility would consist of both an antenna, attached to the existing cabling with a strand-mounting bracket at a height of 30' 7" and an equipment box mounted with a bracket at a base height of 9'. Aside from painting the equipment, the facility would not be camouflaged and would therefore be in plain sight of roadway users and immediately adjacent residences. As demonstrated in the NextG equipment currently installed throughout the community, the equipment is readily visible despite meeting the "very small facility" standards because the equipment box is clustered with small mounting components that clutter the pole. See Attachment D for photos of existing NextG equipment examples. All telecommunications development standards apply to all telecommunications facilities regardless of processing Tier. Consistent with MLUDC Chapter 35.444.010.D.2.d., which requires undergrounding of telecommunications support facilities, including equipment boxes, similar telecommunications facility designs in the County that have mounted their cellular antennas on utility poles have undergrounded their support equipment in a vault proving that the technology is available and feasible. Undergrounding the support equipment leaves the antenna as the only visible feature of the facility, thus significantly reducing the facility's prominence along the street. See Attachment E for photographs of an example of an existing AT&T facility at the intersection of Los Positas and Cliff Drive, permitted by Santa Barbara County. While this AT&T site is considered a "microcell" facility and not part of a DAS, regardless the antennas are mounted on a pole in a public right of way and the associated equipment is concealed in an underground vault. The County's contracted telecommunications expert, Jonathan Kramer, confirmed that undergrounding equipment is technically feasible for NextG. In fact, Mr. Kramer informed P&D staff that NextG has previously undergrounded their equipment for an existing DAS site in Rolling Hills Estates, California (see Attachment C for Mr. Kramer's letter). Photographs of alternative sites included in Mr. Kramer's letter also show the aesthetic improvement associated with a more streamlined antenna design and with concealed fiber optic cabling.

The Montecito Community area is distinguished by its low intensity development and semi-rural character. With small meandering roads, lined with mature foliage, absence of sidewalks, curbs or gutters, and minimal lighting and utility infrastructure, the roadways largely contribute to the semi-rural character of the area. In fact, the Montecito Community Plan Goal LU-M-2 requires the County to "Preserve roads at important aesthetic elements that help to define the semi-rural character of the community" and "Strive to ensure that all development along roads is designed in a manner that does not impinge upon the character of the roadway." Therefore, development immediately along the road corridors should be minimized to the extent feasible to maintain the existing character of the area. As is discussed above, telecommunications facilities can minimize their presence along road corridors by undergrounding the support equipment and fiber optic cable and by using a more streamlined antenna

design. Because the NextG facility under appeal does not propose undergrounding of the equipment and fiber optic cable and the use of a more streamlined antenna, this design does not “blend into the environment to the greatest extent feasible” and is not consistent with the goals of the Montecito Community Plan.

Alternatives Analysis: Siting

At the March 16, 2010 Board hearing, NextG provided the County with an alternative site analysis for the proposed antenna node. The alternative analysis looked at existing poles within their coverage objective area. The applicant identified and explored 10 existing poles as potential alternatives. However, of the 10, only one pole was determined to be a feasible alternative that 1) could achieve the coverage objective⁵, 2) had the structural integrity and capacity to accommodate the facility, and 3) was any more “preferable” than the original proposal.

The proposed facility is located on a pole on the east side of the street in the public right-of-way along Olive Mill Road near its intersection with Hot Springs Road. The pole is located near the Casa Dorinda retirement community exit gate, behind an existing tree (approximately 10 feet tall) with other various mature trees also around the pole location. The pole is predominately visible from Olive Mill Road traveling north towards the intersection of Hot Springs Road; and is also visible from the intersection from Hot Springs Road facing east.

The alternative pole proposed is three poles down from the original location, also along the east side of Olive Mill Road just north of the intersection of Hot Springs Road. See Attachment F for the alternative site analysis location map provided by NextG, and Attachment G for photographs of both poles. The “alternative location” would instead be next to the entrance of the Casa Dorinda community. This area also has various trees and hedges that are a part of the retirement community development and sits further from the intersection but also sits at the bend in the road.

Although this alternative pole offers an additional option for location of the facility, the design of the facility would remain the same. As discussed in the section above, mounting both an antenna and equipment box on a utility pole in the right-of-way of Olive Mill Road would not sufficiently disguise the facility to maintain the visual character of the roadway. It is the semi-rural character of these roads throughout the area that brings together the cohesive community character of Montecito. In order to maintain the semi-rural character of Montecito’s roads, additional visible infrastructure should be avoided to the extent feasible and therefore the equipment for the facilities should be undergrounded.

In conclusion, the facility on appeal is not consistent with the Montecito Community Plan and therefore cannot be approved as proposed. Findings for denial to support this conclusion are included in Attachment A.

Background:

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 unincorporated areas in Goleta, Santa Barbara, Hope Ranch, Montecito and

⁵ NextG indicated that although the alternative pole would provide less coverage as compared to the original site, it would be sufficient to meet their network needs.

Summerland. NextG has also applied for, and obtained in some cases, similar permits from other local municipalities such as City of Goleta, City of Santa Barbara, and the City of Carpinteria. Please see the March 16, 2010 Board of Supervisors letter (included as Attachment H) for background information regarding the County's telecommunication ordinance, permit tiers and the FCC regulations.

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 \$4,186.00 (23 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:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on August 3, 2010. The notice shall appear in the Santa Barbara Daily Sound. The Clerk of the Board shall fulfill the noticing requirements. Mailing labels for the mailed notice are attached. A minute order and a copy of the notice and proof of publication shall be returned to Planning and Development, attention David Villalobos.

Attachments:

- A) Findings
- B) NextG Letter, dated March 30, 2010
- C) Mr. Jonathan Kramer Letter, dated July 16, 2010
- D) Existing NextG DAS Facility Photos
- E) Existing AT&T Right-of-Way Facility Photos
- F) Alternative Site Analysis
- G) Site Comparison Photos
- H) Board of Supervisors Departmental Letter, dated March 16, 2010

Authored by:

Megan Lowery, Planner II

cc:

Anne Almy, Planning Supervisor

G:\GROUP\Permitting\Case Files\APL\2000s\10 cases\10APL-00000-00004 NextG ESB08\2010.08.03 BOS\2010.08.03 BOS Departmental Ltr ESB08.doc