



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: No
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 ESB15 Appeal
10APL-00000-000012, Right-of-Way of School House 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 consider the NextG appeal (Case No. 10APL-00000-00012) of the Montecito Planning Commission's April 28, 2010¹ denial of the NextG Cellular Antenna ESB15 permit, Case No. 09LUP-00000-00320 located in the public right of way of School House Road (adjacent to APN 009-080-007) in Montecito, First Supervisorial District, and take the following actions:

1. Deny the appeal, Case No. 10APL-00000-00012, thereby upholding the Montecito Planning Commission's denial of 09LUP-00000-00320;
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-00000-00320.

Summary Text:

NextG's application for 09LUP-00000-00320 was submitted on August 5, 2009. The project is a request by the agent, Sharon James, for the applicant, NextG Networks of California, Inc., for a Land

¹ The July 13, 2010 set hearing letter erroneously cited February 24, 2010 as the date of the Planning Commission denial and that error is corrected herein.

Use Permit to allow construction and use of an unmanned, telecommunications facility under provisions of the County Code zoning requirements for property zoned 2-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, mounted along with the equipment box on an existing wood pole in the public right of way. Planning & Development staff approved the permit application on March 10, 2010. An appeal by Judith Blankenship, on behalf of the appellant group, was timely filed on March 22, 2010. Staff brought the appeal case (10APL-00000-00011) before the Montecito Planning Commission on April 28, 2010.

At the April 28, 2010 hearing, the Montecito Planning Commission upheld Ms. Blankenship's appeal, and denied the project on the inability to make the required Land Use Permit and Commercial Telecommunications Facility Findings. The Commission's denial findings were based on the project's visibility along the roadway and exacerbation of "the already diminished semi-rural character of the roadway" where Montecito Community Plan Goal LU-M-2 requires the County 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.*" An appeal of the Commission's decision was timely filed by Patrick Ryan, on behalf of NextG Networks, on May 7, 2010.

The attached letter from County's contracted telecommunications consultant, Attachment D, 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.

Background:

GROUND'S FOR APPEAL

The grounds for appeal are specified in Mr. Ryan's letter included in the appeal application. Responses to Mr. Ryan's letter are provided below under each appeal issue area. Please see Attachment G for a complete copy of the appeal application and letter, dated May 7, 2010.

I. "EMF Concerns"

P&D concurs that the County cannot regulate on the basis of perceived health effects per the Telecommunications Act that states "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)iv.)

However, as stated, local agencies can ensure that a facility complies with the FCC's regulations. The County required NextG to submit a report assessing the proposed project's emissions and compliance

with applicable safety limits. The report confirmed that the proposed facility would operate well below the applicable FCC safety limits (specifically at 0.3% of the Maximum Permissible Exposure limit at 26 ft. from the antenna). Therefore the County cannot regulate on this basis.

II. "Additional Background"

The findings made by the Montecito Planning Commission, as cited by the appellant, are driven by the project's adverse aesthetic effect at the project location in the community of Montecito. The Ninth Court of Appeals determined in the *Sprint v. City of Palos Verdes Estates* that "California law does not prohibit local governments from taking into account aesthetic consideration in deciding whether to permit the development [of] WCFs [Wireless Communication Facilities] within their jurisdictions."

The Montecito LUDC authorizes the denial of telecommunications facilities permit applications on aesthetic grounds in the event the project does not comply with applicable Comprehensive Plan policies, including Community Plan policies, or ordinance requirements. In addition to the permit requirements specified in the Permit Tiers for telecommunications facilities, the County's telecommunications ordinance establishes three levels of development standards that apply to all telecommunications facilities, including Tiers 1-4. Exceptions to these standards may only be made for development standards in Sections 35.444.010.D.2 and 35.444.010.D.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."

The Montecito Planning Commission was unable to make an exemption for this project as not undergrounding the equipment box and cable causes the facility to be more visible. Moreover, exemption from one or more development standards in Section 35.444.010.D.3, also requires the approval of a Conditional Use Permit.

To ensure compliance with these development standards, the review authority must also make the additional findings specified in Section 35.444.010.G. Explicitly requiring the review authority 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."* Should any project lack the ability to meet this, or any of the required findings, the Commission may deny the project, as they did in the instant case. Below are the four findings and the evidence on which the Commission based their decision.

1. *Land Use Permit Finding Sec. 35.472.110.E.1.a: 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 Association’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 the community values. Erection of additional infrastructure on one of these poles, as proposed in the project, would serve to exacerbate the already diminished semi-rural character of the roadway. Therefore this finding cannot be made.

2. Commercial Telecommunication Facility Finding Sec. 35.444.010.G.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 County Board of Supervisors 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.

3. Commercial Telecommunication Facility Finding Sec. 35.444.010.G.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.

4. Commercial Telecommunication Facility Finding Sec. 35.444.010.G.4: The facility complies with all required development standards unless granted a specific exemption by the review authority as provided in Subsection D.

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. However, the project design proposes to mount the equipment above ground, on the pole above the existing hedge without any backdrop screening. As a result, it would be readily visible to all roadway users. Undergrounding the cabinet would significantly decrease the visibility of the facility. Therefore, the proposed design does not comply with Development Standard 2.d and this finding cannot be made.

**III. “The Commission’s Decision Is Inconsistent With Law
NextG’s Proposed Node Must Be Granted as a Tier 1 Facility”**

Staff concurs that the proposed project qualifies as a Tier 1 facility, and as Mr. Ryan stated, “the Commission made no findings to the contrary.”

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

Mr. Ryan argues that "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." After which, Mr. Ryan asserts that NextG, per CPUC Section 7901, "has an absolute right to deploy its facilities in the public rights of way that cannot be denied," and "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."

Staff concurs that NextG has rights defined in CPUC Section 7901 to deploy its facilities, however Section 7901 does not prohibit the County from considering aesthetics in regulation of such facilities subject to Section 7901, which specifies that such facilities should only be allowed "in such manner and at such points as not to incommode the public use of the road or highway." Consistent with this, 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." These goals require development immediately along the road corridors be minimized to the extent feasible to maintain the existing character of the area. Although a number of poles exist along School House Road, many of the poles are minimalistic in design (lacking brackets, transformers, crossarms). The subject pole is one such pole. And the proposed project would add equipment to a pole that is currently void of equipment. Additionally, the equipment would be mounted at a height of nine feet above ground level, which would be directly within view of roadway users and nearby residences. Furthermore, it is feasible to avoid adding equipment onto the pole altogether by undergrounding the support equipment in an underground vault. Therefore this particular design has not minimized infrastructure to the extent feasible to avoid additional clutter to existing roadway and currently overburdened utility infrastructure as the Montecito Community Plan requires.

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

First, it should be noted that not all utility poles are in the public right of way; some utility poles cross through the interior of privately-owned parcels. In fact, several existing utility pole-mounted telecommunications facilities have been permitted on such poles, including but not limited to Verizon at Edwards Property (01CUP-00000-00154), Sprint at Vargas Ranch (01CUP-00000-00151), and T-Mobile at Chamberlin Ranch (04DVP-00000-00006).

For poles that are in the right of way, it is imperative that the County apply the design standards prescribed in the ordinance to maintain the character of the County's communities for the very reason that Mr. Ryan points out, since "by their very nature, [they] are visible from public view."² Staff concurs that the "The requirement that a telecommunications facility be located to minimize its visibility

² Patrick Ryan Appeal Letter dated May 7, 2010, p. 10.

from public view does not demand that the facility be invisible from public view”³ but rather that the most effective designs are employed in a site-specific manner to “minimize their visibility to the extent feasible.” 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 B for photos of existing NextG equipment examples.

Consistent with the Montecito LUDC 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 C 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. 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 D 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 is distinguished by its low intensity development and semi-rural character. With small meandering roads, lined with mature foliage, absent of sidewalks, curbs or gutters, and minimal lighting and utility infrastructure, the roadways largely contribute to the semi-rural character of the area. As stated above, 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.

VI. “NextG’s Proposed Node Is Compatible With And Blends In With The Surrounding Environment”

As discussed in Section IV above, although the cabling attached to the subject pole has silver canisters, the pole itself is void of any cross arms or equipment. Additionally, the poles in the pole line on the south side of the street are minimal in nature, many of which even lack crossarms, brackets and transformers. NextG’s equipment would not only add to the currently empty pole, but would be mounted at a height of 9 feet, which is within plain sight of roadway users. Moreover, there are feasible

³ Patrick Ryan, p.10.

design options that would reduce the visibility of the facility in this right of way, including undergrounding equipment and fiber optic cable as well as using an alternative more streamlined antenna design.

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

MLUDC Section 35.444.010.D.2.d requires “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).” This standard is applicable to all telecommunications facilities, regardless of Tier, unless the revi finds 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...” The Montecito Commission found that the proposed project does not qualify for an exemption from this standard due to the project’s inherent visibility. Furthermore, undergrounding of the equipment box has been shown to be a technologically feasible alternative for telecommunications facilities.

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

Comments in this section have been noted, and staff concurs that the proposed project meets the applicable MLUDC requirements cited by Mr. Ryan.

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

The findings made by the Commission are driven by the project’s aesthetic effect at the project location, in the community of Montecito, not on an assessment of coverage.

X. “NextG’s Proposed Node Meets All Relevant CEQA Requirements”

Staff concurs that the California Public Utilities Commission (CPUC), who assumed the lead agency status for purposes of CEQA, reviewed the proposed antenna and equipment installation as part of a larger “project” under CEQA that included all of the components of the Distributed Antennas System network (i.e. cabling, trenching, equipment boxes, antennas, etc.) across the South Coast of Santa Barbara County (including the cities of Goleta, Santa Barbara, and Carpinteria). 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) and was not challenged.

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 \$2,366.00 (13 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) Existing NextG Facility Photos
- C) Existing AT&T Facility Photos
- D) Kramer Letter dated July 16, 2010
- E) Staff Report, Montecito Planning Commission Hearing April 28, 2010
- F) Action Letter, Montecito Planning Commission Action Letter May 5, 2010
- G) Appeal Application, and Letter dated May 7, 2010 (with enclosures)

Authored by:

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CC:

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