

NextG Networks Inc. of California Huntington Beach Distributed Antenna System Project

COMMENTS RECEIVED AND RESPONSES TO COMMENTS

ATTACHMENT 2 OF THE INITIAL STUDY

February 2010

Prepared for:

California Public Utilities Commission
Energy Division
505 Van Ness Avenue
San Francisco, California 94102

Prepared by:

DUDEK

605 Third Street
Encinitas, California 92024

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1. Introduction

This attachment provides responses to comments received during the Draft Initial Study (IS) and Negative Declaration (ND) for the NextG Huntington Beach Digital Antenna System (DAS) project public review period, which began on November 23, 2009, and ended on December 22, 2009, providing 30 days for public review. Detailed responses are provided to individual comments in Section 1.4, which also provides copies of comments submitted on the Draft IS/ND.

2. Comment Letters Received

Table 1-1 provides an index of all comment letters received and corresponding numbered responses. Comment letters are organized by category and then chronologically in the order the letter was received. Each letter is assigned a letter designation and each comment within that letter is numbered. Comment letters, bracketed by comment, are reproduced in their entirety and are followed by responses to each comment. Changes to the IS/ND, where deemed appropriate, are summarized in the response and refer to the applicable section in the IS/ND. Text changes are indicated with ~~strike through~~/underline. A clean version of the text is provided in the Final IS/ND.

Table 1-1: Index to Comment Letters and Responses to Comments

Document Letter Designation	Agency/Respondent and Date of Letter	Response Designations
Public Agencies and Organizations		
A	Department of Toxic Substances Control (Greg Holmes), December 14, 2009	A-1–A-12
B	Department of Transportation, District 12 (Maryam Molavi), December 21, 2009	B-1–B-4
C	City of Huntington Beach, Office of City Attorney (Scott Field), December 22, 2009	C-1–C-56
D	Governor's Office of Planning and Research, State Clearinghouse and Planning Unit (Scott Morgan), December 24, 2009	D-1–D-3
The Applicant		
E	NextG Nextworks of California, Inc. (Davis Wright Montgomery—Suzanne Toller, Kerry Shea, Robert Millar), December 22, 2009	E1–E-16
F	NextG Nextworks of California, Inc. (Davis Wright Montgomery—Robert Millar), January 11, 2010	F-1–F-10

3. Public Meeting

In order to help understand the proposed project and to obtain public comments on the IS/ND, the California Public Utilities Commission (CPUC) held a public meeting on Thursday, December 3, 2009, in Community Room B at the Huntington Beach Central Library at 7111 Talbert Avenue in Huntington Beach, California, from 6:30 p.m. to 9:00 p.m. At the public meeting, the environmental team and CPUC staff were available to discuss the environmental document and to obtain public comments on the environmental document. Attendees were provided with comment cards and contact information with the option to submit comments at a later date. No comments were received as a result of this meeting.

4. Comments and Responses

Comment Letter A



Linda S. Adams
Secretary for
Environmental Protection



Department of Toxic Substances Control

Maziar Movassaghi, Acting Director
5796 Corporate Avenue
Cypress, California 90630



Arnold Schwarzenegger
Governor

December 14, 2009

Mr. Jensen Uchida
California Public Utilities Commission
Energy Division
505 Van Ness Avenue
San Francisco, California 94102

NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
FOR HUNTINGTON BEACH DISTRIBUTED ANTENNA SYSTEM PROJECT
(SCH # 2009111073), ORANGE COUNTY

Dear Mr. Uchida:

The Department of Toxic Substances Control (DTSC) has received your submitted draft Initial Study (IS) and purposed Mitigated Negative Declaration (MND) for the above-mentioned project. The following project description is stated in your document: "NextG Networks, Inc. (NextG) is proposing the completion of its Distributed Antenna System. Eight of the 15 nodes, 79,419 feet of aerial fiber, and approximately 1,531 feet of underground fiber have been constructed. The remaining seven nodes, and the cable to connect them to the network, would complete the project. The remaining seven nodes include three new poles, approximately 33,556 feet of aerial fiber, and 7,165 feet of underground fiber. This would be accomplished through trenching of a 1- to 2-foot-deep trench between 3 and 6 feet from edge of the pavement. The project is located entirely within the publicly owned right-of-way within developed urban area of the City of Huntington Beach in northwestern Orange County, California. The majority of the existing landscape of the project area is characterized by major roadways and smaller ancillary streets containing residences, commercial businesses, parks or recreation areas, and industry, such as active oil wells. In some areas, namely along Pacific Coast Highway, the project site is located adjacent to vacant or open space areas." DTSC has the following comments:

- 1) The MND should identify the mechanism to initiate any required investigation and/or remediation for any site that may be contaminated, and the government agency to provide appropriate regulatory oversight. If necessary, DTSC would

A-1

A-2

Mr. Jensen Uchida
December 14, 2009
Page 2 of 4

require an oversight agreement in order to review such documents. Please see comment No. 9 below for more information.

For all identified sites, the MND should evaluate whether conditions at the site may pose a threat to human health or the environment. Following are the databases of some of the pertinent regulatory agencies:

- National Priorities List (NPL): A list maintained by the United States Environmental Protection Agency (U.S.EPA).
- EnviroStor: A Database primarily used by the California Department of Toxic Substances Control, accessible through DTSC's website (see below).
- Resource Conservation and Recovery Information System (RCRIS): A database of RCRA facilities that is maintained by U.S. EPA.
- Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS): A database of CERCLA sites that is maintained by U.S.EPA.
- Solid Waste Information System (SWIS): A database provided by the California Integrated Waste Management Board which consists of both open as well as closed and inactive solid waste disposal facilities and transfer stations.
- Leaking Underground Storage Tanks (LUST) / Spills, Leaks, Investigations and Cleanups (SLIC): A list that is maintained by Regional Water Quality Control Boards.
- Local Counties and Cities maintain lists for hazardous substances cleanup sites and leaking underground storage tanks.
- The United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California, 90017, (213) 452-3908, maintains a list of Formerly Used Defense Sites (FUDS).

- 2) All environmental investigations, sampling and/or remediation for the site should be conducted under a Workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations, including any Phase I or II Environmental Site Assessment Investigations should be summarized in the document. All sampling results in which hazardous substances were found should be clearly summarized in a table.

**A-2
Cont.**

A-3

Mr. Jensen Uchida
December 14, 2009
Page 3 of 4

- | | | |
|----|---|-------|
| 3) | If buildings or other structures, asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should be conducted for the presence of other related hazardous chemicals, lead-based paints or products, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints or products, mercury or ACMs are identified, proper precautions should be taken during demolition activities. Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies. | } A-4 |
| 4) | Project construction may require soil excavation or filling in certain areas. Sampling may be required. If soil is contaminated, it must be properly disposed and not simply placed in another location onsite. Land Disposal Restrictions (LDRs) may be applicable to such soils. Also, if the project proposes to import soil to backfill the areas excavated, sampling should be conducted to ensure that the imported soil is free of contamination. | } A-5 |
| 5) | Human health and the environment of sensitive receptors should be protected during the construction or demolition activities. If it is found necessary, a study of the site and a health risk assessment overseen and approved by the appropriate government agency and a qualified health risk assessor should be conducted to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment. | } A-6 |
| 6) | If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA. | } A-7 |
| 7) | If during construction/demolition of the project, the soil and/or groundwater contamination is suspected, construction/demolition in the area should cease and appropriate health and safety procedures should be implemented. | } A-8 |
| 8) | If the site was used for agricultural, livestock or related activities, onsite soils and groundwater might contain pesticides, agricultural chemical, organic waste or other related residue. Proper investigation, and remedial actions, if necessary, should be conducted under the oversight of and approved by a government agency at the site prior to construction of the project. | } A-9 |

Mr. Jensen Uchida
December 14, 2009
Page 4 of 4

9) DTSC can provide guidance for cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies which would not be considered responsible parties under CERCLA, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

A-10

10) In future CEQA documents, please provide your e-mail address, so DTSC can send you comments both electronically and by mail

A-11

If you have any questions regarding this letter, please contact Mr. Rafiq Ahmed, Project Manager, at rahmed@dtsc.ca.gov, or by phone at (714) 484-5491.

A-12

Sincerely,



Greg Holmes
Unit Chief
Brownfields and Environmental Restoration Program - Cypress Office

cc: Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044
state.clearinghouse@opr.ca.gov

CEQA Tracking Center
Department of Toxic Substances Control
Office of Environmental Planning and Analysis
1001 I Street, 22nd Floor, M.S. 22-2
Sacramento, California 95814
nritter@dtsc.ca.gov

CEQA# 2732

**Response to Document A
Department of Toxic Substances Control (Greg Holmes)
Dated December 14, 2009**

- A-1** The commenter provides an accurate description of the proposed project.
- A-2** A database search for contaminated sites within the vicinity of the proposed project has been completed. Appropriate databases were included in this search and no identified sites were found within the project area. It should be noted that no actual maps of these facilities are available but are provided by address or universal transverse mercator (UTM) coordinates.
- A-3** No remediation activities have been identified as necessary for the proposed project. Should one be deemed necessary, a work plan will be provided to the Department of Toxic Substances Control (DTSC).
- A-4** No buildings or other structures will be demolished as part of the proposed project.
- A-5** It is anticipated that any material that will be used for excavation or filling will be from the same right-of-way area. Any fill material will be tested to ensure that it is not contaminated prior to its use. Any contaminated soils will be removed and disposed of according to the California Environmental Protection Agency's (EPA's) Department of Toxic Substances Control regulations and the fill material will be replaced with clean material.
- A-6** Human health and any sensitive receptors will be protected during the construction process.
- A-7** As discussed in the Initial Study, there will be the potential to generate hazardous waste during construction. The waste will be managed in accordance with the California Hazardous Waste Control Law and the Hazardous Waste Control Regulations.
- A-8** In the event that contaminated groundwater is encountered, construction will cease in the area until appropriate health and safety procedures are implemented.
- A-9** The project site has not been used for agricultural or livestock activities.
- A-10** It is not anticipated that clean-up activities will be required. If appropriate, the DTSC will be contacted for guidance.
- A-11** This information is noted.
- A-12** This information is noted.

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Comment Letter B

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

District 12
3337 Michelson Drive, Suite 380
Irvine, CA 92612-8894
Tel: (949) 724-2241
Fax: (949) 724-2592



*Flex your power!
Be energy efficient!*

December 21, 2009

Jensen Uchida
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

File: IGR/CEQA
SCH#: 2009111073
Log #: 2409
SR-1, SR-39

Subject: Huntington Beach Distributed Antennae System Project

Dear Mr. Uchida,

Thank you for the opportunity to review and comment on the **Initial Study and Negative Declaration (IS/ND) for the Huntington Beach Distributed Antennae System Project**. The proposal is to install approximately 7.5 miles of fiber-optic cables, steel & concrete poles, enclosures and splice boxes, including 33,555 feet of aerial fiber-optic cable, and 7,165 feet of underground fiber-optic cable. The project site is located in various areas within the City of Huntington Beach. The nearest State routes to this project are SR-1 and SR-39.

B-1

The Department of Transportation (Department) is a responsible agency on this project and we have the following comments:

1. As part of Applicant Proposed Measure CTT-1 (as listed on Page 5 of the Negative Declaration), a Traffic Management Plan (TMP) shall be submitted to Caltrans, summarizing the procedures that may be used to minimize traffic impacts and the process for distribution of accurate and timely traffic information to the public.
2. Any project work proposed in the vicinity of the Department's right-of-way would require an encroachment permit and all environmental concerns must be adequately addressed. If the environmental documentation for the project does not meet the Department's requirements, additional documentation would be required before approval of the encroachment permit. Please coordinate with Department to meet requirements for any work within or near State right-of-way. All entities other than the Department working within the Department's right-of-way must obtain an Encroachment Permit prior to commencement of work. Please allow 2 to 4 weeks for a complete submittal to be reviewed and for a permit to be issued. When applying for an Encroachment Permit, please incorporate Environmental Documentation, SWPPP/ WPCP, Hydraulic Calculations, Traffic Control Plans, Geotechnical Analysis, right-of-way certification and all relevant design details including design exception approvals. For specific details on the Caltrans Encroachment Permits procedure, please refer to the Caltrans Encroachment Permits Manual. The latest edition of the manual is available on the web site: <http://www.dot.ca.gov/hq/traffops/developserv/permits/>

B-2


B-3

"Caltrans improves mobility across California"

Please continue to keep us informed of this project and any future developments, which could potentially impact the State Transportation Facilities. If you have any questions or need to contact us, please do not hesitate to call Marlon Regisford at (949) 724-2241.

} B-4

Sincerely,



Maryam Molavi, Acting Branch Chief
Local Development/Intergovernmental Review

"Caltrans improves mobility across California"

**Comments Received and Responses to Comments
Next G Networks Inc. of California
Huntington Beach Distributed Antenna System Project**

TRANSMISSION VERIFICATION REPORT

TIME : 12/21/2009 17:03
 NAME :
 FAX :
 TEL :
 SER. # : BRCE2J341404

DATE, TIME	12/21 17:02
FAX NO./NAME	914157832200
DURATION	00:00:39
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION
 District 12
 3117 Michelson Drive, Suite 380
 Irvine, CA 92612-8894
 Tel: (949) 724-2241
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*Flex your power!
Be energy efficient!*

December 21, 2009

Jensen Uchida
 California Public Utilities Commission
 505 Van Ness Avenue
 San Francisco, California 94102

Post-It® Fax Note	7871	Date	12/21/09	# of pages	2
To	Jensen Uchida	From	Marlon Regisford		
Co./Dept	California P.U.C.	Co.	Caltrans District 12		
Phone #	(415) 703-5484	Phone #	(949) 724-2241		
Fax #	(415) 703-2200	Fax #			

Subject: Huntington Beach Distributed Antennae System Project

Dear Mr. Uchida,

Thank you for the opportunity to review and comment on the **Initial Study and Negative Declaration (IS/ND) for the Huntington Beach Distributed Antennae System Project**. The proposal is to install approximately 7.5 miles of fiber-optic cables, steel & concrete poles, enclosures and splice boxes, including 33,555 feet of aerial fiber-optic cable, and 7,165 feet of underground fiber-optic cable. The project site is located is located at various areas within the City of Huntington Beach. The nearest State routes to this project are SR-1 and SR-39.

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1. As part of Applicant Proposed Measure CTT-1 (as listed on Page 5 of the Negative Declaration), a Traffic Management Plan (TMP) shall be submitted to Caltrans, summarizing the procedures that may be used to minimize traffic impacts and the process for distribution of accurate and timely traffic information to the public.
2. Any project work proposed in the vicinity of the Department's right-of-way would require an encroachment permit and all environmental concerns must be adequately addressed. If the

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Response to Document B
California Department of Transportation, District 22 (Maryam Molavi)
Dated January 21, 2010

- B-1** This comment is noted. This description is an accurate description of the proposed project.
- B-2** This comment is noted. The Traffic Management Plan shall be submitted to Caltrans for approval.
- B-3** This comment is noted, no further response is provided or required.
- B-4** This comment is noted, no further response is provided or required.

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Comment Letter C



Jennifer McGrath
City Attorney

OFFICE OF
CITY ATTORNEY
P.O. Box 190
2000 Main Street
Huntington Beach, California 92648
Telephone: (714) 536-5555
Facsimile: (714) 374-1590

Paul D'Alessandro, Assistant City Attorney
Scott Field, Assistant City Attorney
Neal Moore, Sr. Deputy City Attorney
John Fujii, Sr. Deputy City Attorney
Daniel K. Ohl, Deputy City Attorney
Sarah Sutton, Deputy City Attorney
Mike Vigliotta, Deputy City Attorney

December 22, 2009

Jensen Uchida
California Public Utilities Commission
c/o Dudek
605 Third Street
Encinitas, CA 92024

Re: NextG Networks Inc. of California Huntington Beach Distributed Antenna
System Project
CPCN Application No. A09-03-007

Dear Mr. Uchida:

The City of Huntington Beach has reviewed the Draft Initial Study and Negative Declaration (the "IS") that the California Public Utilities Commission issued for NextG's Huntington Beach Distributed Antenna System Project (the "Project"). The City's comments are divided into two sections. First are general comments that require revisions to the IS throughout the document. Second are specific page and paragraph comments. Together, they require revising the IS to find that an EIR is necessary for the Project.

C-1

I. General Comments.

Municipal Code Chapter 17.64-the Undergrounding Ordinance. The IS concludes that the installation of three new poles "would not result in a significant change from existing conditions and is not considered to be a substantial conflict with Municipal Code 17.64." (p. 4-53.) To the contrary, Chapter 17.64 (the "Undergrounding Ordinance"), expressly prohibits all new poles and lines. The City General Plan further enforces this requirement. At page 4-52, the IS acknowledges that the Utilities Element of the City General Plan states a policy to continue to underground above ground electrical transmission lines.

C-2

Contrary to the suggestion in the matrix at page 4-45 that the Project will not conflict with any regulation adopted for "the purpose of avoiding an environmental effect," Chapter 17.64 was adopted for the purpose of mitigating the environmental effects on community aesthetics of above ground utility lines and poles. Consequently, checking the "less than significant impact" box is inappropriate. Rather, these above ground lines and poles present a potentially significant impact, and consequently, an EIR is required, not a negative declaration.

Jason Uchida, California Public Utilities Commission
December 22, 2009
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In support of the negative declaration, the IS states that installation of three new utility poles and miles of new aerial cable on utility poles is not a "significant change from existing conditions." (p. 4-53.) Notably, the IS distinguishes between the new poles and new aerials. Only the aerials are a "less-than-significant" impact. (p. 4-12.) The IS states merely that the poles would "blend into the area." (p. 4-12.)

C-3

The City Council of Huntington Beach has concluded in adopting the Undergrounding Ordinance and prohibiting new poles and new lines that both are significant impacts. CEQA recognizes that any conflict with applicable land use regulations should be treated as a potentially environmental significant impact. (*City of Santa Cruz v. PG&E* (2000) 82 Cal.App.4th, 1167, 1177-78; *People v. Hardacre* (2004) 116 Cal.App.4th 1292, 1301.) Moreover, CEQA requires preparation of an EIR whenever a "fair argument" can be made that the project will have a significant environmental impact. (*No Oil v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.)

C-4

The conclusion of the IS that violation of the Undergrounding Ordinance is not a significant environmental effect violates the principle of CEQA that regulatory standards like the Undergrounding Ordinance are thresholds of significance. (See, *Schaeffer Land v. San Jose* (1989) 215 Cal App 3d 612, 623-625, holding that a negative declaration was appropriate where the project satisfied City level of traffic service standards.) Moreover, the CPUC has already decided in the case of NextG that, "consistent with long standing Commission policy to recognize local government concerns," the Commission would continue to "require utilities to accommodate local land use requirements in constructing their facilities." (D.07-07-023, at p. 6; emphasis added.)

C-5

Not only does the Undergrounding Ordinance require that the IS find new poles and aerials are potentially significant impacts, but the facts demand the same result. The IS claims that the new aerial cable "constitutes a less-than significant impact due to the presence of other cables on the pole." (p. 4-12.) To the contrary, attached as Exhibit A are photographs showing the new cables NextG has already added to the utility poles. The cumulative effect of adding another tier of lines is to *exacerbate* visual blight. Moreover, if these wires are permitted, another company will want to add still another tier of wires, and the process continues, *ad nauseam*, until the blight is intolerable.

C-6

Because violation of the Undergrounding Ordinance is a potentially significant environmental effect, Public Resources Code Sections 21002.1 and 210061 require preparation of an EIR. (See, CEQA Guidelines Section 15080-15096.) Equally important is that any EIR must consider a reasonable range of project alternatives that could feasibly attain the basic project objectives while avoiding the significant effects of the project. (CEQA Guidelines § 15126.6.) Such alternatives should include compliance with the Undergrounding Ordinance by undergrounding new lines and placing antennas outside of the right-of-way instead, not on new utility poles.

C-7

41664

Jason Uchida, California Public Utilities Commission
December 22, 2009
Pg. 3 of 8

- Zoning Code Section 230.96-the Wireless Ordinance. The IS wrongly concludes that violation of the City Zoning Code Section 230.96 (the "Wireless Ordinance") will not potentially have a significant environmental effect. } C-8
- One reason for this error may be a misunderstanding of the requirements of the Wireless Ordinance. For example, the Land Use and Planning matrix states that Section 230.96 only requires that NextG obtain an encroachment permit. (p. 4-53.) The reference to an encroachment permit at Section 230.96(F)(12)(a) is an *additional* requirement for facilities in the public right-of-way. It is not a substitute for obtaining a Wireless Permit and CUP under the Ordinance. } C-9
- Section 230.96 applies to any "Wireless Communication Facility," which is identified as any "antenna structure and any appurtenant facilities or equipment that transmits electronic waves...used in connection with the provision of wireless communication service, including, but not limited to digital, cellular and radio service." (Sec. 230.96(B)(11).) This definition includes NextG's antennas. } C-10
- The purpose of the Wireless Ordinance is expressly environmental; it is designed to "[prevent] visual clutter by locating wireless communication facilities outside of residential zones and where they are invisible to pedestrians, and co-located with other facilities." (Sec. 230.96(A).) } C-11
- To accomplish this objective, the City requires submittal of a Wireless Permit Application, which is issued upon an applicant showing "that the antenna is located in the least obtrusive location feasible so as to eliminate any gap in service." (Sec. 230.96(D).) This siting standard was judicially approved in *MetroPCS v. City of San Francisco* (9th Cir. 2005) 400 F.3d 715, and *Sprint v. City of Palos Verdes Estates* (9th Cir. 2009) 583 F.3d 716. } C-12
- Page 4 of the IS states that the Project Objective is "to improve wireless coverage and expand capacity." This suggests that the Project may not satisfy the requirement that the Project is necessary to eliminate a service gap. In *Palos Verdes Estates*, the Court explained that the operator must demonstrate that there are "significant gaps in coverage" in the mobile network and that no alternative sites are available. Merely improving coverage and expanding capacity is not equivalent to a service gap. } C-13
- Pursuant to the Ordinance, if a Wireless Permit is issued, antennas found to be "stealth" or camouflaged may be administratively approved. (Sec. 230.96(E)(1).) However, CUPs are required for installation in non-residential zones of the City. (Sec. 230.96(E)(2).) NextG's Project is principally located in the non-residential zones of the City. } C-14
- As explained above regarding the Undergrounding Ordinance, violation of a regulation constitutes a significant environmental effect, particularly where the regulation was enacted like the Wireless Ordinance to prevent "visual clutter." It follows that—despite the claim that the Project "is not considered to be a substantial conflict with Zoning Ordinance 230.96 (p. 4-53)"—installing the Project pursuant only to an encroachment permit is a potentially significant environmental effect, requiring the completion of an EIR. } C-15

41664

Jason Uchida, California Public Utilities Commission
December 22, 2009
Pg. 4 of 8

Undergrounding Districts. The IS states that NextG will underground its lines where other aboveground utility lines do not exist. (p. 4-52.) It also states that NextG will comply with the Beach Boulevard Undergrounding District (p. 1-29), but does not accurately identify the requirements of that District, and ignores another City Undergrounding Project. Consequently, the following IS modifications are required:

} C-16

- a. Atlanta from 300 feet west to 300 east of Beach Boulevard per the Beach Boulevard Undergrounding project.
- b. Newland Avenue from PCH to Hamilton per the current City undergrounding project.

} C-17
} C-18

II. Page and Paragraph Comments.

Pg. 1, ¶1- Pg. 2, ¶1. The Project history is inaccurate. The system was not partially constructed as a result of the categorical exemption, as the IS suggests, but pursuant to a preliminary injunction issued in the Federal lawsuit entitled, *NextG v. City of Huntington Beach*, U.S. District Court for the Central District of California, Case No. SACV 07-1471. This lawsuit required the City to issue NextG encroachment permits to construct a portion of the Project. The Ninth Circuit reversed the injunction in Appeal No. 08-55430. The City then obtained a judgment in its favor and against NextG on March 16, 2009. As to the existing partial system, the District Court directed NextG to either immediately apply to the City for approval of that system, or file for relief in State Court. NextG chose the latter course, resulting in the pending law suit entitled *NextG Networks of California, Inc. v. City of Huntington Beach*, Orange County Superior Court No. 30-2009-00119646.

} C-19

The City also filed Complaint No. 08-04-037 with the CPUC on April 23, 2008 to challenge the categorical exemption issued by the Energy Division of the CPUC. When the CPUC rejected NextG's motion to dismiss the City's Complaint dismissed, NextG chose to withdraw pursuing Project approval by way of the categorical exemption and instead seek an environmental assessment of the entire Project. Hence the instant IS.

} C-20

Pg. 2, ¶1. The Project is described principally in connection with the uncompleted portion of the Project. The IS states that "this project description also includes the installation of seven operational nodes for which NextG has completed installation." By only including the operational nodes in the Project, the IS excludes 1,531 feet of underground cable and 79,419 feet of aerial cable from the Project.

} C-21

The City is aware that at the December 3, 2009 public meeting, the Consultant stated that the Project includes the installed aerial. However, just revising the Project description to reference the installed portion of the Project is no remedy. The fundamental problem is that the IS does not describe how the NextG's proposed mitigation measures apply to work already completed. This point will be addressed later as to specific issues, such as completing a biological survey on work already completed.

} C-22

41664

Jason Uchida, California Public Utilities Commission
December 22, 2009
Pg. 5 of 8

- | | | |
|--|--------------------------------------|--------------------|
| <p><u>Pg. 2, ¶3.</u> The IS states that aerial cable “would be overlashed to existing wires where feasible.” To the contrary, in the State lawsuit, NextG has refused to disclose any arrangements to overlash to existing cables. To the best knowledge of the City, none of the installed aerial cable was overlashed to existing cable, nor would any new cable be overlashed to existing cable.</p> | <div style="font-size: 2em;">}</div> | <p>C-23</p> |
| <p><u>Pg. 2, ¶4.</u> Revise the third sentence to read: “This would be accomplished through trenching of a 2 to 3 foot-deep trench. Trench location is dependent on location of other existing utilities and shall meet minimum vertical and horizontal clearance requirements from said utilities.”</p> | <div style="font-size: 2em;">}</div> | <p>C-24</p> |
| <p>There is no explanation of why the new poles require an excavation and pouring of a foundation 5 to 7 feet wide and 15 to 30 feet deep. This size of a foundation will have a significant impact on the roadway and curb and gutter since poles are required to be installed a minimum of 18” from the curb face. Any tree (vegetation) removal from public right of way will be required to be replaced with two new trees for every one removed.</p> | <div style="font-size: 2em;">}</div> | <p>C-25</p> |
| <p><u>Pg. 2, ¶¶ 1-5.</u> The description of the new poles fails to provide any information of the height of the poles.</p> | <div style="font-size: 2em;">}</div> | <p>C-26</p> |
| <p><u>Pg. 3, ¶1.</u> Any tree (vegetation) removal from public right-of-way must be replaced two for one.</p> | <div style="font-size: 2em;">}</div> | <p>C-27</p> |
| <p><u>Pg. 3, ¶3.</u> “...placement of conduit and cable within public r/w” Prior to any work within City streets or City right-of-way, the following shall be addressed:</p> <ul style="list-style-type: none"> i. A Plan showing the proposed alignments of such structures shall be submitted to PW for review and approval. ii. Traffic Control Plans shall be submitted to PW for review and approval. iii. Open pavement trenching in City street is prohibited. Any potholing or open cuts in existing pavement shall adhere to all PW Standards for pavement patching and open cut street moratoriums. | <div style="font-size: 2em;">}</div> | <p>C-28</p> |
| <p><u>Pg. 5, ¶1(CTT-1).</u> See comment re: Pg. 3, ¶3(i) above. Further, the second and third paragraphs of CTT-1 should be removed. Specific conditions relating to construction traffic control are determined during issuance of the encroachment permit.</p> | <div style="font-size: 2em;">}</div> | <p>C-29</p> |
| <p><u>Pg.5, ¶6 (CTT-4).</u> Revise to provide that NextG shall comply with current State, County and City stormwater measures, ordinances and codes.</p> | <div style="font-size: 2em;">}</div> | <p>C-30</p> |
| <p><u>Pg. 6, ¶1 (CTT-7).</u> Revise to provide that emergency vehicle access plan shall be reviewed by Fire Dept and PW (Traffic).</p> | <div style="font-size: 2em;">}</div> | <p>C-31</p> |

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December 22, 2009
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- Pg. 1-1. At last sentence on the page, "the City's Local Coastal Program" should be added after the reference to the General Plan.] C-32
- Pg. 1-2. Section 7 should be modified to reflect that zoning for properties located in the Coastal Zone includes the "-CZ" suffix, which stands for Coastal Zone Overlay.] C-33
- Pg. 1-23. See comments re: Pg. 3, ¶3 above.] C-34
- Pg. 1-25. See comments re: Pg. 3, ¶3(ii) above. Further, the second and third paragraphs of CTT-1 should be removed. Specific conditions relating to construction traffic control are determined during issuance of the encroachment permit.] C-35
- Pg. 1-27-1-29, and 4-32 (d). NextG proposes retaining qualified biologists and recourse specialists to survey the route to protect in biological resources, including nesting and migratory birds. There are several problems with this proposal.] C-36
- First, there is no explanation of why the survey has not already been completed given that the Project alignment is known. (See, Figure 1-2.)] C-37
- Second, implementation of the Biological Resources measures must be specific. Attached as Exhibit B is sample language from a recent City project regarding nesting birds that could be used as a reference in drafting conditions for this Project.] C-38
- Third, tree pruning is necessary in order for NextG to install new aerial lines. NextG should employ a professional arborist where all tree pruning is required, to ensure that no pruning endangers the health of the trees. Further, all pruning should be performed consistent with City pruning standards, which are contained in City Resolution No. 4545. Attached as Exhibit C are excerpted Pruning Standards from Resolution No. 4545, pruning diagrams and ANSI-A 300 Pruning Standards from the City Tree Management Plan.] C-39
- Fourth, a tree survey should be completed to mitigate those impacts already caused by installation of aerials. Section 232.04 (E) of the Zoning Codes states that trees must be replaced with equivalent size and specie where improper pruning has permanently disfigured or mutilated beyond their ability to re-grow to an acceptable form for that specific variety. Typically replacement is two 36" box trees for each mature tree removed.] C-40
- Pg. 4-11 (a). The analysis should be corrected to indicate that construction of pole HBN14 will obstruct views of the Pacific Ocean, which is considered a scenic vista.] C-41
- Pg. 4-37 (b). See comments re Pg. 5, ¶1.] C-42
- Pg. 4-39 (a). The IS states that hazardous material will be stored securely at offsite facilities. The location of such facilities should be provided.] C-43

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Pg. 4-40 (e) and Pg. 4-58 (e). The airport analysis is incorrect. A portion of the project site lies within the Planning Area for the Joint Forces Training Center in Los Alamitos. This area of the City is included in the AELUP for the Training Center. See attached Exhibit E. The Project does not have any impact to air space, but the IS should be corrected. } C-44

Pg. 4-41-43. The City's standard CEQA checklist includes six items related to Hydrology and Water Quality that are not on the CEQA Guidelines example form. A copy of the additional items is attached as Exhibit D. These items were added per the Orange County Drainage Area Management Plan update in 2003/2004. The IS should be revised to thoroughly analyze these issues that have been deemed important by the City and County. } C-45

Pg. 4-42 (a). A copy of the SWRCB-approved NPDES permit and SWPPP shall be submitted to Public Works for their records prior to issuance of any encroachment permit. } C-46

Pg. 4-43 (b). "... if dewatering is required for pole construction, an NPDES permit from the Santa Ana Regional Water Quality Control Board" shall be revised to, "a De Minimis permit from the State Water Resources Control Board." } C-47

Pg. 4-45. The description of existing conditions regarding Node HB N12 misconstrues site conditions. It states that this pole "would be located in an industrial and residentially developed area on the northwestern corner of the intersection of Ellis Avenue and Goldenwest Street...Immediately adjacent to the proposed new pole site is a fenced-off, abandoned oil field that continues along the northern side of Ellis Avenue...." In actuality, the northwestern corner of the intersection of Ellis Avenue and Goldenwest Street is City park space, designated as Open Space-Park. The park space is unimproved; however, this corner site is used on an annual basis for spillover from the Equestrian Center, when they have larger shows. The site is across the street from residential uses; however, there is no industrial use in the area. There is no "abandoned oil field." There is an abandoned oil well west of the intersection. Not mentioned in the IS is the regularly used equestrian trail that parallels the north side of Ellis Avenue. } C-48

Pg. 4-62. The City's standard checklist includes an item that is not on the CEQA Guidelines example form, which is "c) Affect existing recreational opportunities." The IS should address the temporary impacts to the equestrian trail, referenced in the item above. In addition, the IS should analyze the temporary impacts to tourists on PCI. } C-49

Pg. 6-1. "Broeren" is misspelled. } C-50

III. Conclusion.

In conclusion, the IS bases its recommendation that the Project be issued a negative declaration principally on the opinion of the CPUC's consultant that new poles and aerials will not have a potentially significant environmental effect. This conclusion fails to pay appropriate deference to the existing regulations of the City, a responsible agency under CEQA. In particular, the mere existence of the Undergrounding Ordinance and the Wireless } C-51

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Pg. 8 of 8

Ordinance constitute "fair argument" that the Project will potentially have significant environmental effects. Consequently, the IS should be revised to conclude that an EIR should be prepared for the Project. The EIR should be scoped to focus on aesthetic impacts and Project alternatives.

Should the CPUC or its consultant have any questions or require any additional information, please don't hesitate to contact me.

Sincerely,



SCOTT FIELD
Assistant City Attorney

Attachments – Exhibits A-E

c: Tony Olmos, City Engineer
Steven Bogart, Acting Principal Engineer
Darren Sam, Senior Traffic Engineer
Mary Beth Broeren, Planning Manager
Robert Millar, NextG

↑
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Cont.

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EXHIBIT A

PHOTOGRAPHS TAKEN
AND
ANNOTATIONS APPLIED
BY
JONATHAN KRAMER

C-52

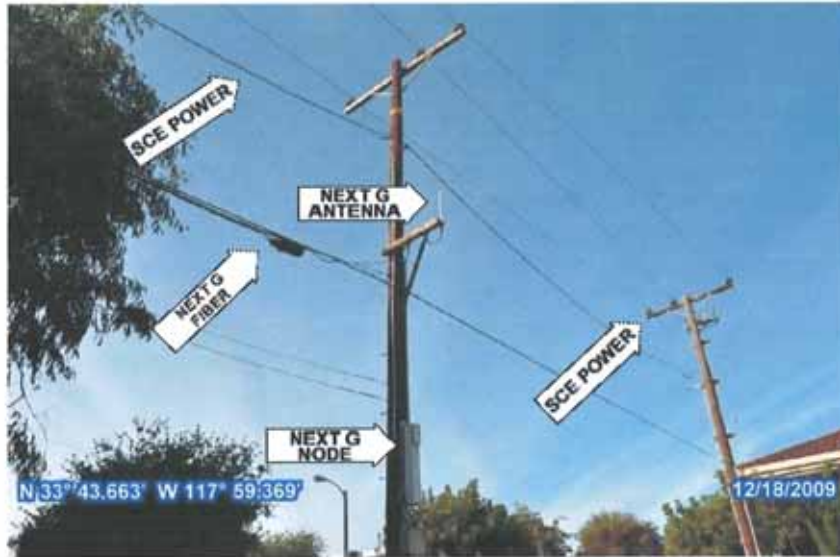




LOCATION: Graham Street and Meadowlark Drive (indicated by hexagon on map)



C-52
Cont.



LOCATION: Beach Boulevard and Stark Street (indicated by hexagon on map)



C-52
Cont.



LOCATION: Juliette Low Drive (indicated by hexagon on map)



C-52
Cont.



LOCATION: Silver Land and Alhambra Drive (indicated by hexagon on map)



C-52
Cont.



LOCATION: Heil Avenue and Gothard Street (indicated by hexagon on map)



C-52
Cont.



LOCATION: Springdale Street and Doyle Drive (indicated by hexagon on map)



C-52
Cont.

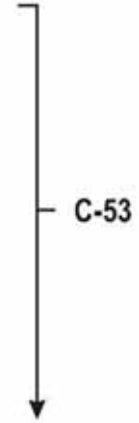


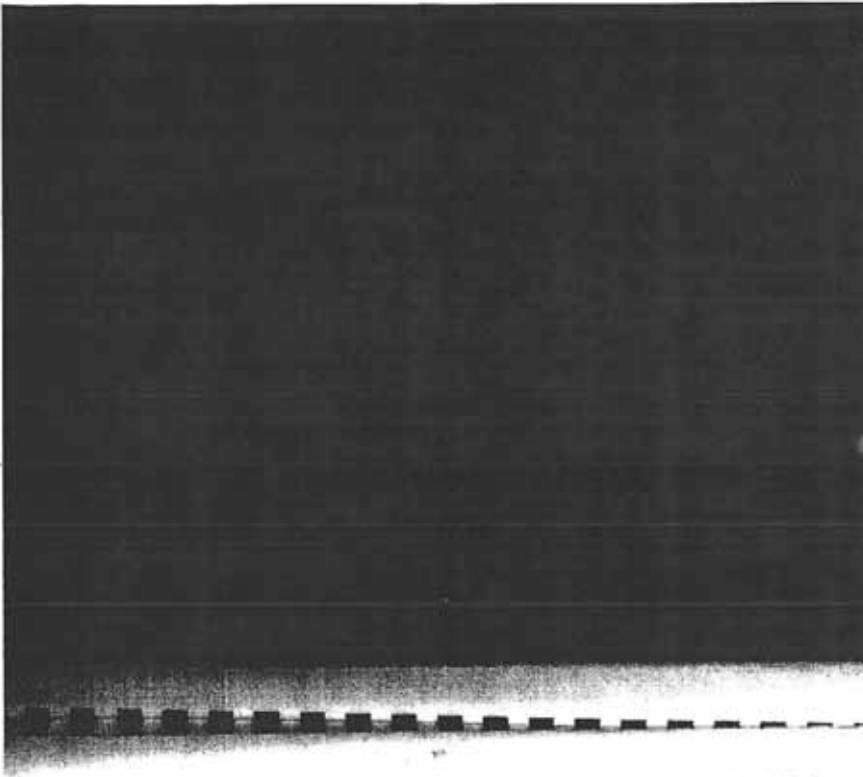
Time Warner: Fiber cable overlashed to coaxial cable
Verizon: Fiber cable overlashed to twisted pair copper cable
LOCATION: Springdale Street near Dorita Drive (indicated by hexagon on map)



C-52
Cont.

EXHIBIT B





C-53
 Cont.

4.3 Ecological Resources

a. less-than-significant level by ensuring that surveys for NBTIA species are performed during the appropriate time of year and, if necessary, construction buffer zones are established to protect existing NBTIA species. As such, the following mitigation measure shall be implemented prior to the construction of any project-level development:

MM4.4.1 *Nesting sites for ground squirrel*

- a. Prior to any construction or vegetation removal between February 15 and August 31, a nesting hole survey shall be conducted by a qualified biologist of all habitats within 250 feet of the construction area. Surveys shall be conducted no later than 14 days and no more than 90 days prior to commencement of construction activities and surveys shall be conducted in accordance with CDFG protocol as applicable. If no other nests are identified on or within 250 feet of the construction site, no further mitigation is necessary. A copy of the pre-construction survey shall be submitted to the City of Huntington Beach. If an active nest of a NBTIA ground squirrel is identified within 500 feet of construction, a 100-foot no-work buffer shall be established between the nest and construction activity. This buffer shall be reduced in accordance with CDFG and/or USFWS.
- b. Completion of the nesting site shall be determined by qualified biologists or biologists.

There are no sensitive species anticipated to enter in the proposed Specific Plan area. However, implementation of mitigation measure MM4.4.1 would require surveys for NBTIA-protected species, and includes impact-mitigation measures to ensure that the substantial loss of these species will not occur. These measures would include this impact to a less-than-significant level.

Threshold	Would the project have a substantial adverse effect on "sensitive" protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. However, with mitigation measures, this impact is considered less than significant.
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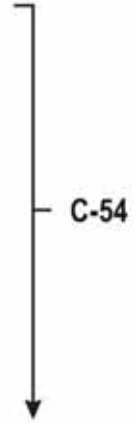
Impact 4.3.2

Implementation of the proposed project could have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. However, with mitigation measures, this impact is considered less than significant.

There are no wetland habitats or blue-tiger streams within the project site, as defined by the Clean Water Act or the California Fish and Game Code. However, wetlands do exist south of the project boundary near Pacific Coast Highway that could be potentially impacted by development of the proposed project. In addition, over the build-out horizon of the Specific Plan, the potential exists for new wetlands to be created or develop within the project site.

Fill or disturbance of wetland habitats would be considered a significant impact. Implementation of mitigation measure MM4.3.2 would reduce this potentially significant impact to a less-than-significant level by ensuring that a wetland determination is conducted prior to development of any wetland parcels, as deemed necessary by the City of Huntington Beach. If wetlands are found, the project applicant will be required to obtain all necessary wetland permits and mitigate for impacts to wetland habitats.

EXHIBIT C



- (1) As a general rule, cables should be placed approximately two-thirds (2/3) of the distance between the crotch and top branch ends. Rust-resistant cables, thimbles, and lags should be used. The ends of a cable should be attached to hooks or eyes of lags or bolts, and thimbles must be used in the eye splice in each end of the cable. In no instances shall cable to wrapped around a branch.
- (2) All cabling and bracing practices with screw rods shall follow National Arborist Association or other city accepted Arboricultural standards.

5. PRUNING STANDARDS

a) Purpose

Trees and other woody plants respond in specific and predictable ways to pruning and other maintenance practices. Careful study of these responses has led to pruning practices which best preserve and enhance the beauty, structural integrity, and functional value of trees.

In an effort to promote practices, which encourage the preservation of tree structure and health, the Western Chapter of the International Society of Arboriculture Certification Committee has established the following Standards of Pruning for Certified Arborist. The Standards are presented as working guidelines, recognizing that trees are individually unique in form and structure, and that their pruning needs may not always fit strict rules. The Certified Arborist must take responsibility for special pruning practices that vary greatly from these Standards.

b) Pruning Techniques

- (1) A thinning cut removes a branch at its point of attachment or shortens it to a lateral large enough to assume the terminal role. Thinning opens up a tree, reduces weight on heavy limbs, can reduce a tree's height, distributes ensuing invigorating growth throughout a tree and helps retain the tree's natural shape. Thinning cuts are therefore preferred in tree pruning.

When shortening a branch or leader, the lateral to which it is cut should be at least one-half the diameter of the cut being made. Removal of a branch or leader back to a sufficiently large lateral is often call "drop crotching."

- (2) A heading cut removes a branch to a stub, a bud or a lateral Branch not large enough to assume the terminal role. Heading cuts should seldom be used because vigorous, weakly attached upright sprouts are forced just below such cuts, and the tree's natural form is altered. In some situations, branch stubs die or produce only weak sprouts.

C-54
Cont.

- (3) When removing a live branch, pruning cuts should be made in branch tissue just outside the branch bark ridge and collar, which are trunk tissue. (Figures 1 and 2) If no collar is visible, the angle of the cut should approximate the angle formed by the branch bark ridge and the trunk.
- (4) When removing a dead branch, the final cut should be made outside the collar of live callus tissue. If the collar has grown out along the branch stub, only the dead stub should be removed, the live collar should remain intact, and uninjured. (Figures 1 and 2)
- (5) When reducing the length of a branch or the height of a leader, the final cut should be made just beyond (without violating) the branch bark ridge of the branch being cut to. The cut should approximately bisect the angle formed by the branch bark ridge and an imaginary line perpendicular to the trunk or branch cut. (Figure 3)
- (6) A goal of structural pruning is to maintain the size of lateral branches to less than three-fourth the diameter of the parent branch or trunk. If the branch is codominant or close to the size of the parent branch, thin the branch's foliage by 15% to 25%, particularly near the terminal. Thin the parent branch less, if at all. This will allow the parent branch to grow at a faster rate, will reduce the weight of the lateral branch, slow its total growth, and develop a stronger branch attachment. If this does not appear appropriate, the branch may need to be shortened to a large lateral or be completely removed. (Figure 4)
- (7) On large-growing trees, except whorl-branching conifers, branches that are more than one-third the diameter of the trunk should be spaced along the trunk at least 18 inches apart, on center. If this is not possible because of the present size of the tree, such branches should have their foliage thinned 15% to 25%, particularly near their terminals and/or be shortened. (Figures 4 and 5)
- (8) Pruning cuts should be clean and smooth with the bark at the edge of the cut firmly attached to the wood.
- (9) Large or heavy cut branches should be lowered on ropes or thrown clear to prevent injury to personnel, the tree, or other property.

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Cont.

- (10) Wound dressing and tree paints have not been shown to be effective in preventing or reducing decay. They are therefore not recommended for routine use when pruning.

- c) Types of Pruning - Mature Trees
 - (1) Crown Cleaning

Crown cleaning or cleaning out is the removal of dead, dying, diseased, crowded, weakly attached, and low-vigor branches and waterspouts from a tree crown.

 - (2) Crown Thinning

Crown thinning includes crown cleaning and the selective removal of branches to increase light penetration and air movement into the crown. Increased light and air stimulates and maintains interior foliage, which in turn improves branch taper and strength. Thinning reduces the wind-sail effect of the crown and the weight of heavy limbs. Thinning the crown can emphasize the structural beauty of trunk and branches as well as improve the growth of plants beneath the tree by increasing light penetration. When thinning the crown of mature trees, seldom should more than one-third of the live foliage be removed.

At least one-half of the foliage should be on branches that arise in the lower two-thirds of the trees. Likewise, when thinning laterals from a limb, an effort should be made to retain inner lateral branches and leave the same distribution of foliage along the branch. Trees and branches so pruned will have stress more evenly distributed throughout the tree or along a branch.

An effect known as "Lion's-tailing" results from pruning out the inside lateral branches. Lion's-tailing, by removing all the inner foliage, displaces the weight to the ends of the branches and may result in sunburned branches, waterspouts, weakened branch structure and limb breakage.

 - (3) Crown Reduction

Crown reduction is used to reduce the height and/or spread of a tree. Thinning cuts are most effective in maintaining the structural integrity and natural form of a tree and in delaying the time when it will need to be pruned again. The lateral to which a branch or trunk is cut should be at least one-half the diameter of the cut being made.

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Cont.

(4) Crown Restoration

Crown restoration can improve the structure and appearance of trees that have been topped or severely pruned using heading cuts. One to three sprouts on main branch stubs should be selected to reform a more natural appearing crown. Selected vigorous sprouts may need to be thinned to a lateral, or even headed, to control length growth in order to ensure adequate attachment for the size of the sprout. Restoration may require several prunings over a number of years.

(5) Crown Raising

Crown raising removes the lower branches of a tree in order to provide clearance for buildings, vehicles, pedestrians, and vistas. It is important that a tree have at least one-half of its foliage on branches that originate in the lower two-thirds of its crown to ensure a well-formed, tapered structure and to uniformly distribute stress within the tree.

When pruning for view, it is preferable to develop "windows" throughout the foliage of the tree, rather than to severely raise or reduce the crown.

**C-54
Cont.**

d) Size of Pruning Cuts

Each of the Pruning Techniques (Section 5, b, Page 62) and Types of Pruning (Section 5,c, Page 66) can be done to different levels of detail or refinement. The removal of many small branches rather than a few large branches will require more time, but will produce a less-pruned appearance, will force fewer watersprouts and will help to maintain the vitality and structure of the tree. Designating the maximum size (base diameter) that any occasional undesirable branch may be left within the tree crown, such a 1/2", 1" or 2" branch diameter, will establish the degree of pruning desired.

e) Climbing Techniques

- (1) It is recommended and preferred that physical climbing of trees be avoided. If there is a need to elevate the trimmer up into the tree structure to properly trim the tree, the utilization of equipment such as a manlift or aerial truck is recommended.
- (2) Climbing and pruning practices should not injure the tree except for the pruning cuts.

- (3) Climbing spurs or gaffs should not be used when pruning a tree, unless the branches are more than throw-line distance apart. In such cases, the spurs should be removed once the climber is tied in.
- (4) Spurs may be used to reach an injured climber and when removing a tree.
- (5) Rope injury to thin barked trees from loading out heavy limbs should be avoided by installing a block in the tree to carry the load. This technique may also be used to reduce injury to a crotch from the climber's line.

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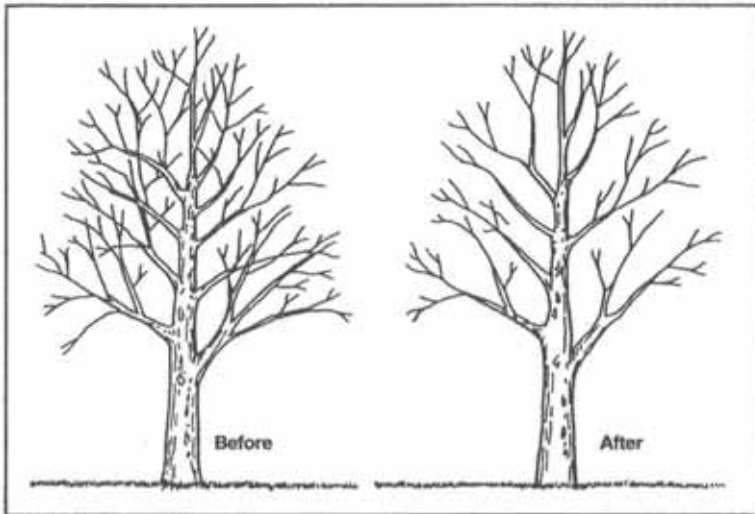


Fig. 4 Thinning a tree removes unwanted branches, reduces weight, and allows light and air penetration.

Figures from the Arborists' Certification Study Guide 1991 used with permission from the International Society of Arboriculture.

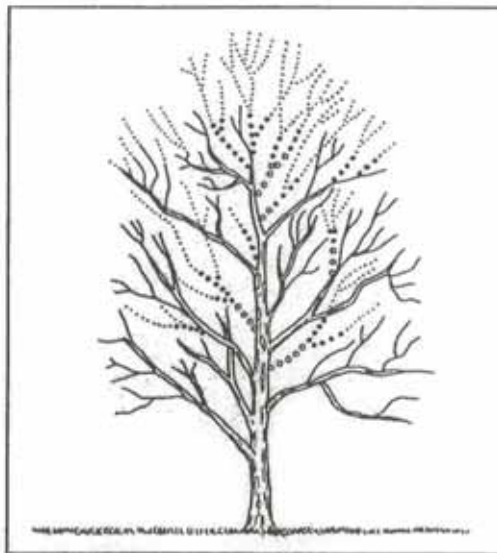


Fig. 5 If the height of a tree must be reduced, all cuts should be made to strong laterals or to the parent limb. Do not cut limbs back to stubs.

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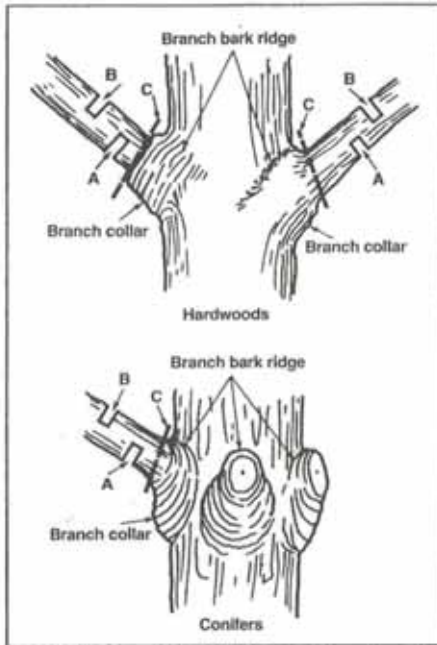


Fig. 1 Pruning principles. The first cut (A) undercuts the limb. The second cut (B) removes the limb. The final cut (C) should be just outside the branch collar to remove the resultant stub.

Figures from the Arborists' Certification Study Guide 1991 used with permission from the International Society of Arboriculture.

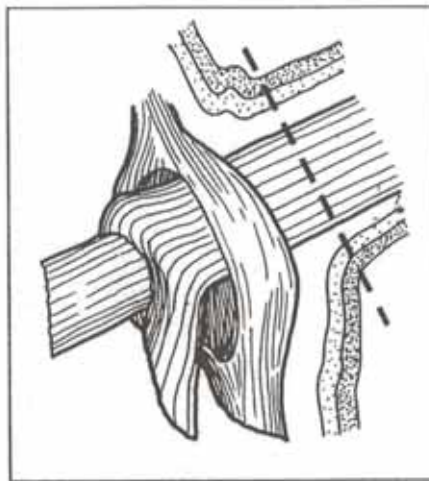


Fig. 2 Proper pruning cut. Cutting outside the branch collar does not damage trunk tissues.

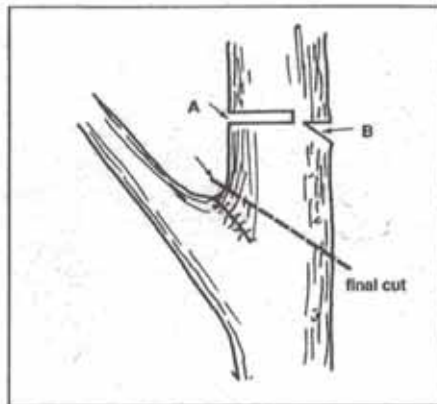


Fig. 3 Drop crotch pruning cuts a limb back to a major lateral.

C-54
Cont.

Appendix C
Tree Pruning Standards
ANSI-A 300 Pruning Standards
(Append to all tree pruning contracts)

The American National Standards Institute A-300-1995 for Tree Care Operations, Standard Practices shall apply to all tree care operations. Tree pruning will be based on the diagnosis of specific tree health or structural problems. Because tree health and structural stability are of major importance, most pruning will be done to assure high quality tree health and branch structure. In conjunction with these intentions and the ANSI A-300 standards these general diagnoses and treatments will apply:

Young Trees

The general diagnosis for young trees (trees with a DBH less than 3 inches) is to develop good branch structure without reducing root growth. The recommended work type scheduled for young trees between one and six years of planting is "Young Tree Pruning" (A-300 section 5.4). The standard practice for training young trees will be a combination of Crown Thinning and Crown Reduction techniques.

Mature Trees

1. The general diagnosis for mature trees (trees with a DBH greater than 6 inches, but less than 24 inches), not in proximity to high voltage utility lines, is to maintain health and structural stability. This will be best accomplished by retaining as much leaf area as possible. The recommended standard practice for maintaining mature trees is Crown Cleaning (A-300 5.3.3.2, a) removal of dead, dying, diseased, weak branches and waterspouts. In some cases it may be desirable to slow the growth of a mature tree or reduce wind-throw. In these or similar cases Crown Thinning (A-300 5.3.3.2, b) is recommended. In some cases the crown of the tree may be growing too large for the site. For this diagnosis, Crown Reduction (A-300 5.3.3.2, d) is recommended. For trees causing obstructions (traffic signs, roadways, etc.), Crown Raising (A-300 5.3.3.2, c) is appropriate. These same procedures are recommended for trees with mature heights less than 30 feet, growing adjacent to high voltage utility lines.
2. The general diagnosis for trees having a mature height potential of greater than 30 feet, adjacent to primary utility lines is to keep the trees from coming into contact with the utility line. The Utility Line Operator or their Contractor will do this work.

Over-Mature Trees

The general diagnosis for over-mature (heritage) trees is to maintain their health and structure without increasing the rate of normal senescence. Over-mature trees require the highest ratio of green leaf tissue for maximum health. **It is not desirable to remove leaf tissue or prune during the time period between bud swell and leaf abscission.** Only Crown Cleaning (A-300 5.3.3.2, a) is recommended for over-mature trees. Specific situations may require other types of pruning. However, if extensive crown reduction, crown thinning, or crown raising are needed, structural weakness and susceptibility to pests may result. If, after pruning, an over mature tree loses branches from summer-branch-drop or during windstorms, the tree should be considered for removal.

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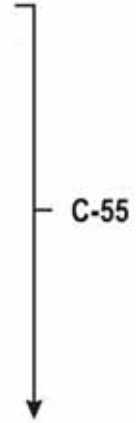
Special Pruning

Some trees in the community forest require special pruning procedures. In some cases these trees have special requirements due to their usage or they require special maintenance to sustain them. In addition to the ANSI A-300-1995 Standards, the following special pruning maintenance procedures shall apply:

1. **Brazilian Pepper** (*Schinus terebinthefolius*): Brazilian Pepper trees account for a significant percentage of damage to sidewalks, curbs and gutters. The primary diagnosis for these trees is to slow their growth as much as possible to impede root growth and the resulting damage to hardscape. For this purpose, Brazilian Pepper trees in street landscape plantings shall be maintained by **shearing** the crown to a rounded symmetrical shape balanced over the center line of the trunk; removal of epicormic (water sprout) shoots to leave a clean trunk; and, Crown Cleaning (A-300 5.3.3.2, a) with the exception that Cross-over branches **should not** be removed as would normally apply to Crown Cleaning.
2. **Palms** (all species): Due to several infectious diseases that infect palms such as *Fusarium* and *Glilocladium*, in addition to (A-300 5.6) palms shall be pruned **only to remove dead fronds** and flowers or flower pods. When flowers or pods are removed, only the flower portion shall be removed. The flower stem should be left as long as possible. Collateral damage to living portions of palms as a result of pruning shall not be tolerated. In addition, the use of chain saws for palm pruning is prohibited. Hand or reciprocal power saws can be used. All saws used for pruning palms shall be treated to reduce inoculum. Treatment shall consist of a five-minute dip in a 2.5% solution of sodium hypochlorite prior to pruning each individual tree.
3. **Overmature-previously topped-Eucalyptus** (*Eucalyptus spp.*): Many of the Eucalyptus trees in the older portions of Huntington Beach were topped as a general practice prior to the discovery that this process was very harmful to trees. The City's policy since 1996 has been to eliminate this practice for City trees. The regrowth of long, epicormic branches from these topping cuts is weakly connected and presents a hazard in high-use areas of the City. To reduce the effect of these old topping cuts and to sustain these Over-Mature trees as long as possible the maintenance procedure for these trees will be Crown Restoration (A-300 5.3.3.2, f). Crown Restoration is a long-term process of shortening the long epicormic branches and retraining the regrowth to shorter internodes. Crown Restoration begins with heading (A-300, section 3.22) the scaffold branches below the old topping cuts and beginning a process which alternates Crown Thinning and Crown Reduction on alternate years for a minimum of five years to retrain the crown branch structure. This process, while visually similar to topping, is a standard practice for trees that have been damaged, as required.

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EXHIBIT D

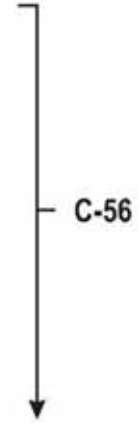


ISSUES (and Supporting Information Sources):	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact	
Discussion: See discussion below.					
k) Potentially impact storm water runoff from construction activities? (Sources: #5)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Discussion: See discussion below.					
l) Potentially impact storm water runoff from post-construction activities? (Sources: #5)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Discussion: See discussion below.					
m) Result in a potential for discharge of storm water pollutants from areas of material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas, loading docks or other outdoor work areas? (Source: #5)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Discussion: See discussion below.					
n) Result in the potential for discharge of storm water to affect the beneficial uses of the receiving waters? (Sources: #5)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Discussion: See discussion below.					
o) Create or contribute significant increases in the flow velocity or volume of storm water runoff to cause environmental harm? (Sources: #5)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Discussion: See discussion below.					
p) Create or contribute significant increases in erosion of the project site or surrounding areas? (Sources: #5)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	



C-55
Cont.

EXHIBIT E



PP-75



CITY OF HUNTINGTON BEACH
INTER-DEPARTMENT COMMUNICATION

TO: Planning Staff
FROM: Howard Zelefsky, Planning Director
DATE: February 10, 1999
SUBJECT: REVIEW OF HIGH RISE STRUCTURES FOR COMPLIANCE WITH
FAA REGULATIONS
REFERENCE: Airport Environs Land Use Plan (Section 2.2.3)

Section 21675 of the Public Utilities Code of the State of California requires the Airport Land Use Commission (ALUC) of Orange County to formulate a comprehensive land use plan for the area surrounding each public airport within Orange County. The purpose of the Airport Environs Land Use Plan (AELUP) is to protect the public from the adverse effects of aircraft noise, to ensure that people and facilities are not concentrated in areas susceptible to aircraft accidents, and to ensure that no structures or activities adversely affect navigable airspace. State legislation has made it mandatory that the City's General Plan and/or implementing zoning regulations be consistent with the AELUP.

The AELUP (Section 2.1.7) states that:

"Local agencies are required to submit only those matters which contemplate or permit structures that would penetrate the imaginary surfaces as defined in Federal Aviation Regulation (FAR) Part 77.13, 77.25, or 77.28 which have been designated for each individual airport for height restriction referral. It is the Commission's intent that a local jurisdiction's legislative acts (general plan amendments, zone changes, etc.) be referred to the Commission pursuant to Public Utilities Code Section 21676(b)."

The City of Huntington Beach is located within the Planning Area for the Armed Forces Reserve Center in Los Alamitos (AFRC). The primary concern addressed in the AELUP for the AFRC focuses on how building heights of future development in Huntington Beach may affect that airport's navigable airspace.

As a result, the City must comply with current FAA regulations that require that:

1. Notice must be filed with the FAA if the proposed object lies above or penetrates the 100:1 imaginary surface from the nearest point of the runway (one foot in height for each 100 feet horizontally) as defined in FAR Part 77.13. (Refer to the attached map to determine if the project is located within the boundary that would require a building height calculation.)

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C-56
Cont.

The following formula shall be used to determine whether or not FAA Approval is required:

- a.
$$\frac{\text{Distance from nearest portion of proposed building to nearest portion of airport runway}}{\text{Divided by 100 (feet)}} = X$$
- b.
$$X + 35 \text{ feet (ground elevation of airport)} = \text{Total Height}$$
- c.
$$\text{Building height} + \text{building pad elevation} - \text{Total Height} = Y$$
- d. If Y is zero or less, FAA Approval is not required

2. Any proposed objects more than 20,000 feet away from the airport, that will exceed 200 feet in height above ground level at each site also must be submitted to the FAA and ALUC for their review.

If the calculation results in review by the FAA, a project description and a copy of plans shall be submitted to the FAA, and an additional set will also need to be submitted to the ALUC.

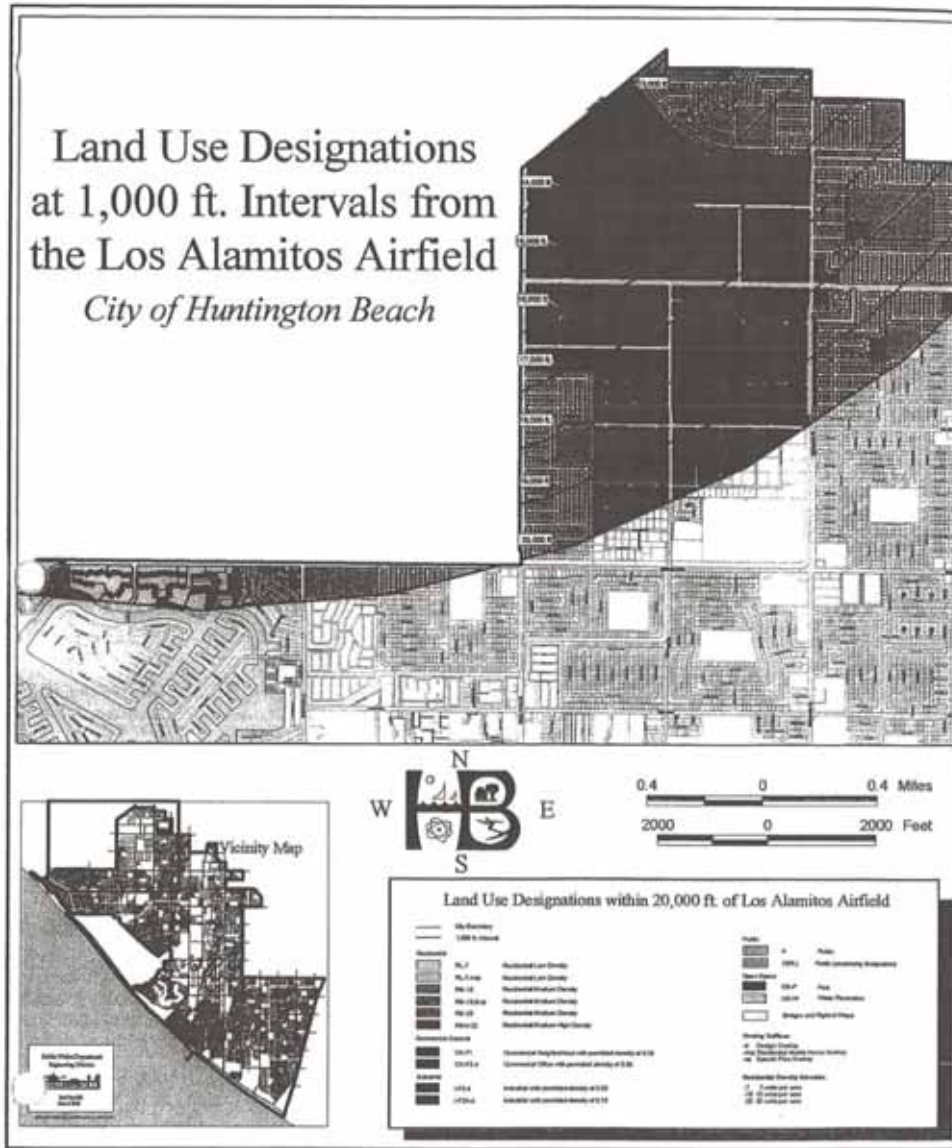
Addresses:

FAA
Western Pacific Regional Office
AWP-530
P.O. Box 92007
Worldway Postal Center
Los Angeles, CA 9009

ALUC
3160 Airway Avenue
Costa Mesa, CA 92626
(949) 252-5170

C-56
Cont.

G:\NOWAKALEUP.DOC



C-56
Cont.

**Response to Document C
City of Huntington Beach, Office of City Attorney (Scott Field)
Dated December 22, 2009**

- C-1** Responses to specific comments from the City of Huntington Beach (City) are found herein. As stated in the IS, no significant impacts associated with the proposed project have been identified and the preparation of an Environmental Impact Report (EIR) is not warranted.
- C-2** The proposed project will not result in placement of utility lines in areas where the aboveground cables and poles do not already exist. In areas where utilities are currently undergrounded, the cables for the DAS will also be undergrounded. In areas where the electrical, phone, and cable TV will be undergrounded in the future, NextG would also place its cables in the common conduits. Therefore, the proposed project would conform with the undergrounding ordinance described by the commenter.
- C-3** The three new utility poles are in locations where there are other utility or light poles; therefore, these new poles would not be out of character for the area since other poles are located in the area. Therefore, the addition of these three poles within an area containing existing poles and other utilities is not considered a significant impact.
- C-4** As stated in response C-2, the proposed project is not considered to be in conflict with the undergrounding ordinance and is therefore not considered a significant impact. Additionally, the CEQA Checklist specifically requires analysis to evaluate whether a project "would conflict with any applicable land use plan, policy or regulation of *an agency with jurisdiction over the project...*" [*emphasis added*]. The CPUC has constitutional preemptive jurisdiction over public utilities.
- C-5** The proposed project is not considered in conflict with the City's undergrounding ordinance since the proposed project will be underground in locations where utilities are currently undergrounded and will be aboveground where aboveground utilities are present.
- C-6** It is interpreted that the existing aboveground utilities do constitute an aesthetic impact. However, the additional cable proposed by the project does not substantially increase this impact so that the proposed project would constitute a significant impact. Comments regarding future additions of more wires by other companies is purely speculative and not require analysis in this CEQA document.
- C-7** See responses C-1 and C-2. No significant impacts have been identified and an EIR is not required.
- C-8** The requirement of the project to obtain a wireless permit is a matter of debate among the applicant, CPUC, and the City, and is the subject of current litigation. The placement of antenna on utility poles is not considered a significant impact.

- C-9** Please see response C-8. The applicant and CPUC believe they are exempt from the wireless permit since the project falls under the auspices of the CPUC. This is currently under litigation.
- C-10** The definition is noted but please see response C-9. It is assumed that the City also considers the ordinance as it applies to cellular hot spots and facilities with wireless interconnections.
- C-11** The antenna system is located in areas where they will be generally unobtrusive and located where other utilities and light poles are located.
- C-12** Please see response C-9.
- C-13** The proposed project is expected to improve the wireless service for the project area. The DAS is designed to provide localized improved service to the area based on the applicant's engineering studies.
- C-14** The project facilities are primarily located in public right-of-ways (ROWs) away from residential areas.
- C-15** As described in response C-8, the applicant does not believe they are subject to the requirements of a wireless permit under the CPUC's regulations and a significant impact resulting from the proposed project will not occur.
- C-16** The applicant will underground cables where cables are currently or proposed to be underground, but not where cables are aboveground.
- C-17** The area described by the commenter was recognized in the IS and it is proposed to underground the cable 300 feet west to 300 feet east of Beach Boulevard.
- C-18** Newland Avenue from Pacific Coast Highway to Hamilton was under reconstruction when the IS was completed. It is understood that utilities would be undergrounded as part of the reconstruction process. NextG will underground the cable either in vacant conduit or in new trenches in the ROW. It is assumed that additional conduits would have been installed for future projects.
- C-19** This information is noted. However, it should be noted that a substantial part of the aerial portion of the line in the City was constructed under the Categorical Exemption (CE) during the time that the injunction was in effect.
- C-20** The applicant agreed to allow the preparation of the California Environmental Quality Act (CEQA) document while still pursuing other legal remedies.
- C-21** The project description and project map delineate the location of the previously installed nodes, aerial cables, and the underground cable areas.
- C-22** The vast majority of the already completed portions of the project are aerial cables and nodes on existing poles. Since the Applicant Proposed Measures (APMs) identified in the IS are those measures to be implemented by the applicant, it is assumed that these measures were implemented for the prior construction.

- C-23** NextG proposes to overlash aerial cables where feasible. Apparently, it was not feasible to overlash to existing cable in the previous construction and it is not known where it will be feasible to overlash cables in future construction.
- C-24** The exact location of trenching will depend upon the location of other utilities within the public ROW.
- C-25** Based on the applicant's response, the excavation for the poles will be 4 feet long, 4 feet wide, and 3 feet deep. This is not expected to create a significant impact within the public ROW.
- C-26** The poles will vary in height, but will be no taller than the existing poles in the vicinity of the new pole.
- C-27** No removal of trees is anticipated for the proposed project. However, there could be some minor pruning required.
- C-28** The City's requirements for a ROW permit are noted.
- C-29** The traffic control plan in the IS is provided as general guidance. Additional requirements may be added by the City as part of the issuance of the encroachment permit.
- C-30** NextG will provide measures for erosion control and prevention of water quality impacts as stipulated in the APMs. Other conditions may be required by the City as part of their encroachment permit.
- C-31** It is understood that the City may require approval of an emergency access plan by the fire department as a requirement of its encroachment permit.
- C-32** The City's Local Coastal Plan is noted by reference regarding land use plans.
- C-33** It is noted that the CZ suffix refers to the Local Coastal Plan Overlay.
- C-34** See response C-28.
- C-35** The APMs provided are basic standards for traffic control. It is understood that the City may add additional conditions as a part of its encroachment permit.
- C-36** See responses C-38 through C-40.
- C-37** The location of nesting birds varies year to year and is only of concern during nesting season. Conducting surveys early in the process would not accurately reflect the current nesting of birds. Furthermore, nesting surveys would not be necessary during non-nesting periods.
- C-38** See response C-37.
- C-39** This comment is noted. No further response is provided or required.
- C-40** It is our understanding that pruning was not required for the past cable installation.
- C-41** Although the pole is located near the Pacific Ocean, it is located within a highly urbanized area with a number of other features including traffic lights, buildings, light posts, etc. This single pole will not further obstruct views of the ocean.

- C-42** Please see response C-29.
- C-43** The location of the facility is not known at this time, but will be at the headquarters of the selected contractor(s). No temporary construction yards will be required as a portion of the proposed project.
- C-44** It is noted that the northeastern portion of the project area is within the planning area for the Joint Forces Training Center in Los Alamitos. The proposed project will not impact this area.
- C-45** The IS covers all required CEQA topics, including hydrology and water quality, and is in conformance with CPUC standards. No significant water quality impacts have been identified. The project will not increase surface areas or contribute to urban runoff or conflict with the Drainage Area Management Plan.
- C-46** This comment is noted. No further response is provided or required.
- C-47** Although the State Water Resources Control Board requires National Pollutant Discharge Elimination System permits for discharge of construction water associated with dewatering, the permits are issued by the Regional Water Quality Control Boards.
- C-48** According to Division of Oil, Gas, and Geothermal Resources records, the site was originally used for oil extraction although the site is no longer used for oil extraction. It is basically undeveloped open space. The proposed project will result in the placement of one node within the public ROW away from the equestrian trail and will not impact the trail. Underground cable will be installed within the roadway again away from the trail.
- C-49** The IS was prepared consistent with CEQA Guidelines. As discussed in response C-48, the proposed project will result in no significant impact to the equestrian trail. Only two poles will be placed along Pacific Coast Highway (PCH), one of which is already in place. The construction of the two poles and the underground connection will be short term in nature and will not significantly impact tourism along PCH.
- C-50** This comment is noted. No further response is provided or required.
- C-51** As discussed in responses C-2 to C-15, the proposed project is not anticipated to result in a significant impact, including an impact associated with the undergrounding and wireless ordinance and an EIR is not required.
- C-52** Exhibit A is noted, no further response is provided or required.
- C-53** Exhibit B is noted. See responses C-37 and C-38.
- C-54** Exhibit C is noted. See response C-39.
- C-55** Exhibit D is noted. See response C-45.
- C-56** Exhibit E is noted. See response C-44.

**Comments Received and Responses to Comments
Next G Networks Inc. of California
Huntington Beach Distributed Antenna System Project**

Comment Letter D



ARNOLD SCHWARZENEGGER
GOVERNOR

December 24, 2009

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



CYNTHIA BRYANT
DIRECTOR

Jensen Uchida
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Subject: Huntington Beach Distributed Antenna System
SCH#: 2009111073

Dear Jensen Uchida:

The State Clearinghouse submitted the above named Negative Declaration to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on December 22, 2009, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

D-1

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan
Acting Director, State Clearinghouse

Enclosures
cc: Resources Agency

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

**Document Details Report
State Clearinghouse Data Base**

SCH# 2009111073
Project Title Huntington Beach Distributed Antenna System
Lead Agency Public Utilities Commission

Type Neg Negative Declaration
Description NOTE: Review Per Lead

The proposed project is to be constructed entirely within the public right-of-way within the City of Huntington Beach. A portion of the proposed project was approved and constructed under the Notice of Proceed (NTP) process prior to the CPUC being requested to analyze the entire project within the City under CEQA. Once complete, the new system would include a total of 6,96 ft of underground fiber-optic cable, 112,975 ft of aboveground fiber-optic cable, and 15 node antennae.

Lead Agency Contact

Name Jensen Uchida
Agency California Public Utilities Commission
Phone 415-704-5484
email
Address 505 Van Ness Avenue
City San Francisco **State** CA **Zip** 94102-3298
Fax

Project Location

County Orange
City Huntington Beach
Region
Lat / Long
Cross Streets Numerous
Parcel No.
Township **Range** **Section** **Base**

Proximity to:

Highways SR 39, SR 1
Airports
Railways
Waterways
Schools Numerous
Land Use Public Roadway Right of Way

Project Issues Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Coastal Zone; Drainage/Absorption; Flood Plain/Flooding; Geologic/Seismic; Landuse; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife

Reviewing Agencies Resources Agency; California Coastal Commission; Department of Fish and Game, Region 5; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 12; Regional Water Quality Control Board, Region 8; Department of Toxic Substances Control; Native American Heritage Commission

Date Received 11/19/2009 **Start of Review** 11/19/2009 **End of Review** 12/22/2009

Note: Blanks in data fields result from insufficient information provided by lead agency.

D-2



Linda S. Adams
Secretary for
Environmental Protection



Department of Toxic Substances Control

Maziar Movassaghi, Acting Director
5796 Corporate Avenue
Cypress, California 90630

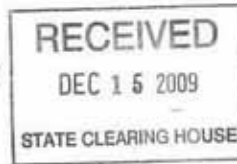


Arnold Schwarzenegger
Governor

December 14, 2009

Mr. Jensen Uchida
California Public Utilities Commission
Energy Division
505 Van Ness Avenue
San Francisco, California 94102

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12.22.09
e



NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
FOR HUNTINGTON BEACH DISTRIBUTED ANTENNA SYSTEM PROJECT
(SCH # 2009111073), ORANGE COUNTY

Dear Mr. Uchida:

The Department of Toxic Substances Control (DTSC) has received your submitted draft Initial Study (IS) and proposed Mitigated Negative Declaration (MND) for the above-mentioned project. The following project description is stated in your document: "NextG Networks, Inc. (NextG) is proposing the completion of its Distributed Antenna System. Eight of the 15 nodes, 79,419 feet of aerial fiber, and approximately 1,531 feet of underground fiber have been constructed. The remaining seven nodes, and the cable to connect them to the network, would complete the project. The remaining seven nodes include three new poles, approximately 33,556 feet of aerial fiber, and 7,165 feet of underground fiber. This would be accomplished through trenching of a 1- to 2-foot-deep trench between 3 and 6 feet from edge of the pavement. The project is located entirely within the publicly owned right-of-way within developed urban area of the City of Huntington Beach in northwestern Orange County, California. The majority of the existing landscape of the project area is characterized by major roadways and smaller ancillary streets containing residences, commercial businesses, parks or recreation areas, and industry, such as active oil wells. In some areas, namely along Pacific Coast Highway, the project site is located adjacent to vacant or open space areas." DTSC has the following comments:

- 1) The MND should identify the mechanism to initiate any required investigation and/or remediation for any site that may be contaminated, and the government agency to provide appropriate regulatory oversight. If necessary, DTSC would

D-3

Mr. Jensen Uchida
December 14, 2009
Page 2 of 4

require an oversight agreement in order to review such documents. Please see comment No. 9 below for more information.

For all identified sites, the MND should evaluate whether conditions at the site may pose a threat to human health or the environment. Following are the databases of some of the pertinent regulatory agencies:

- National Priorities List (NPL): A list maintained by the United States Environmental Protection Agency (U.S.EPA).
 - EnviroStor: A Database primarily used by the California Department of Toxic Substances Control, accessible through DTSC's website (see below).
 - Resource Conservation and Recovery Information System (RCRIS): A database of RCRA facilities that is maintained by U.S. EPA.
 - Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS): A database of CERCLA sites that is maintained by U.S.EPA.
 - Solid Waste Information System (SWIS): A database provided by the California Integrated Waste Management Board which consists of both open as well as closed and inactive solid waste disposal facilities and transfer stations.
 - Leaking Underground Storage Tanks (LUST) / Spills, Leaks, Investigations and Cleanups (SLIC): A list that is maintained by Regional Water Quality Control Boards.
 - Local Counties and Cities maintain lists for hazardous substances cleanup sites and leaking underground storage tanks.
 - The United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California, 90017, (213) 452-3908, maintains a list of Formerly Used Defense Sites (FUDS)
- 2) All environmental investigations, sampling and/or remediation for the site should be conducted under a Workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations, including any Phase I or II Environmental Site Assessment Investigations should be summarized in the document. All sampling results in which hazardous substances were found should be clearly summarized in a table.

D-3
(Cont.)

Mr. Jensen Uchida
December 14, 2009
Page 3 of 4

- 3) If buildings or other structures, asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should be conducted for the presence of other related hazardous chemicals, lead-based paints or products, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints or products, mercury or ACMs are identified, proper precautions should be taken during demolition activities. Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies.
- 4) Project construction may require soil excavation or filling in certain areas. Sampling may be required. If soil is contaminated, it must be properly disposed and not simply placed in another location onsite. Land Disposal Restrictions (LDRs) may be applicable to such soils. Also, if the project proposes to import soil to backfill the areas excavated, sampling should be conducted to ensure that the imported soil is free of contamination.
- 5) Human health and the environment of sensitive receptors should be protected during the construction or demolition activities. If it is found necessary, a study of the site and a health risk assessment overseen and approved by the appropriate government agency and a qualified health risk assessor should be conducted to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment.
- 6) If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA.
- 7) If during construction/demolition of the project, the soil and/or groundwater contamination is suspected, construction/demolition in the area should cease and appropriate health and safety procedures should be implemented.
- 8) If the site was used for agricultural, livestock or related activities, onsite soils and groundwater might contain pesticides, agricultural chemical, organic waste or other related residue. Proper investigation, and remedial actions, if necessary, should be conducted under the oversight of and approved by a government agency at the site prior to construction of the project.

D-3
(Cont.)

Mr. Jensen Uchida
December 14, 2009
Page 4 of 4

- 9) DTSC can provide guidance for cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies which would not be considered responsible parties under CERCLA, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.
- 10) In future CEQA documents, please provide your e-mail address, so DTSC can send you comments both electronically and by mail

If you have any questions regarding this letter, please contact Mr. Rafiq Ahmed, Project Manager, at rahmed@dtsc.ca.gov, or by phone at (714) 484-5491.

Sincerely,



Greg Holmes
Unit Chief
Brownfields and Environmental Restoration Program - Cypress Office

cc: Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044
state.clearinghouse@opr.ca.gov

CEQA Tracking Center
Department of Toxic Substances Control
Office of Environmental Planning and Analysis
1001 I Street, 22nd Floor, M.S. 22-2
Sacramento, California 95814
nritter@dtsc.ca.gov

CEQA# 2732

D-3
(Cont.)

**Response to Document D
Governor's Office of Planning and Research,
State Clearinghouse and Planning Unit (Scott Morgan)
Dated December 24, 2009**

- D-1** This comment is noted, no further response is provided or required.
- D-2** This comment is noted. The project details as presented in the Document Details Report are correct.
- D-3** For responses to comments presented in the letter from the DTSC, please refer to Document A.

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Comment Letter E

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of NextG Networks of California, Inc.
(U-6745-C) for Authority to Engage In Ground-
Disturbing Outside Plant Construction

Application No. 09-03-007
(Filed March 3, 2009)

**COMMENTS OF NEXTG NETWORKS OF CALIFORNIA, INC. (U-6745-C)
ON THE DRAFT INITIAL STUDY AND DRAFT NEGATIVE DECLARATION**

Suzanne Toller
Kerry Shea
Robert Millar
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Telephone: (415) 276-6500
Facsimile: (415) 276-6599
E-mail: robertmillar@dwt.com

On behalf of NextG Networks of California, Inc.

Dated: December 22, 2009

DWT 13717821v2 0058384-000014

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of NextG Networks of California, Inc.
(U-6745-C) for Authority to Engage in Ground-
Disturbing Outside Plant Construction

Application No. 09-03-007
(Filed March 3, 2009)

**COMMENTS OF NEXTG NETWORKS OF CALIFORNIA, INC. (U-6745-C)
ON THE DRAFT INITIAL STUDY AND DRAFT NEGATIVE DECLARATION**

In accordance with the Notice of Intent to Adopt a Negative Declaration issued on November 18, 2009 in Application Docket A.09-03-007, NextG Networks of California, Inc. ("NextG" or "Applicant") respectfully submits the following comments on the Draft Initial Study and Draft Negative Declaration (collectively referred to as the "Draft Neg Dec").

I. BACKGROUND & INTRODUCTION

On March 3, 2009, NextG submitted a detailed Proponent's Environmental Assessment ("PEA") and Application for Authority to Engage in Ground-Disturbing Outside Plant Construction in the City of Huntington Beach (collectively referred to as "Application"). In its Application, NextG sought confirmation of the authorization previously obtained from the Commission through the Notice of Proposed Construction ("NPC") process to construct a Distributed Antenna System ("DAS") network in the City of Huntington Beach, California, and portions of Westminster and Fountain Valley ("Huntington Beach Project" or "Project").¹ Although the Project had already been found by the Commission to be categorically exempt

E-1

¹ NextG was authorized to submit a Notice of Proposed Construction ("NPC") by the Commission in D.07-04-045. See Letter from Jensen Uchida, Commission Energy Division, to Sharon James, NextG Networks, Inc., issued December 3, 2007 ("Notice to Proceed" or "NTP"); and Letters from Jensen Uchida, issued March 17, 2008, June 6, 2008, and July 22, 2008 (these subsequent letters authorized minor modifications to the Project) (collectively the letters are referred to as "Notices to Proceed" or "NTPs"). In accordance with the authorizations issued, NextG constructed the majority of the network, with only 7 of 15 nodes and a relatively minor portion of the fiber remaining to be constructed today.

E-1a

under the California Environmental Quality Act ("CEQA"), NextG stipulated to file the Application in order to resolve disputed issues between the City of Huntington Beach ("City") and NextG in Complaint Docket 08-04-037.

While the prior Notices to Proceed are still valid, and thus NextG's Project is still categorically exempt from CEQA, NextG requested the Commission conduct further environmental review pursuant to its stipulation with the City to seek a Negative Declaration, Mitigated Negative Declaration or Environmental Impact Report for the Project.

II. GENERAL COMMENTS

Both NextG's environmental consultant, ICF Jones and Stokes Inc. ("Jones and Stokes"), and the environmental consultant hired by the Commission, Dudek, concluded the project would have less than significant or no significant environmental impacts under CEQA. Jones and Stokes conducted a comprehensive assessment of the potential environmental impacts and presented its findings in a detailed 128 page report (plus exhibits) that was submitted with NextG's Application. Similarly, Dudek and the Commission have conducted a time consuming and exhaustive review of the Project that took a total of 259 days and resulted in a 134 page Draft Neg Dec that considers every possible environmental impact in significant detail.² The Commission and Dudek have consulted with the City and held two public meetings in Huntington Beach to review the Project and seek comment by local residents.³

As a general matter NextG agrees with the Draft Neg Dec's evaluation of environmental impacts and finds that there is no impact or less than significant impact.

² Per CEQA Guidelines, Section 15107 a Negative Declaration must be completed and approved within 180 days from the date when the lead agency accepts the application as complete. The Commission issued a notice of completion on May 21, 2009 however the Application was filed March 3, 2009 and therefore deemed statutorily complete on April 3, 2009. See CEQA Guidelines, Section 15101.

³ More than 1700 parcel owners adjacent to the Project were individually notified about the Project when the Application was filed and before both of the two public meetings held in Huntington Beach. The same parcel owners were provided with a copy of the Draft Neg Dec by mail in November 2009 and invited to provide written comments to the Commission. The Public Meetings were also advertised in the Orange County Register.

E-1
(Cont.)

E-2

E-3

E-2a

E-2b

NextG further agrees that given the Stipulation between NextG and the City, and given the Application's request for further environmental review, the CPUC's issuance of a Negative Declaration in this circumstance is proper. That said, NextG has (as the Draft Neg Dec reflects)⁴ constructed a portion of the project pursuant to the NTP and categorical exemption originally issued by the CPUC. Accordingly, it would be helpful for the Commission to confirm in the final Negative Declaration that further environmental review as undertaken only because it was requested by NextG as a result of stipulation and to resolve outstanding disputes in Complaint Docket 08-04-037, and that the previous approvals and findings that the Project is categorically exempt from CEQA are still valid and have not been withdrawn.⁵

E-4

NextG also requests that the Draft Neg Dec be finalized and submitted for final disposition as soon as possible. At the December 3, 2009 Public Meeting in Huntington Beach, the Commission's Consultant posted an anticipatory schedule for finalizing the Draft Neg Dec in early January with final Commission action in "January or February 2009." In order to ensure this project moves forward, NextG proposes the following schedule:

E-5

<u>Action</u>	<u>Date</u>
Comment Review Period Closes	12/22/09
Comments (if any) Circulated to Applicant	12/23/09
Replies to Comments (if any)	1/4/09
Responses to Comments and Replies formulated by Dudek, with Commission and NextG input if necessary	1/11/09
Final Negative Declaration submitted to ALJ	1/15/09

⁴ See generally Draft Neg Dec at Introduction and Project Description, p.1.

⁵ In its Application, NextG specifically requested the Commission "confirm the authority" NextG previously received from the Commission to construct the Project in addition to reviewing the detail filed in the PEA. Such an affirmative statement is important because City has asserted in court filings that the Commission's previous findings of categorical exemption are no longer valid.

E-4a

E-4b

III. SPECIFIC COMMENTS ON TEXT IN THE NEGATIVE DECLARATION

Specific comments on passages in the Draft Neg Dec are provided herewith in Appendix A to these Comments.

E-6

IV. CONCLUSION

NextG requests that the Commission confirm the continued validity of the categorical exemption previously issued for this Project and clarify the basis for issuing a Negative Declaration for this Project. NextG also requests that the Commission take the necessary action to correct those specific passages identified by NextG so that the Project accurately reflects the record and materials previously submitted by NextG in this proceeding. NextG requests that the Commission adopt the above proposed timeline for resolution of staff and Dudek's review of the Project.

E-7

Respectfully submitted,

/s/
Suzanne Toller
Kerry Shea
Robert Millar
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Telephone: (415) 276-6500
Facsimile: (415) 276-6599
E-mail: robertmillar@dwt.com

Dated: December 22, 2009

On behalf of NextG Networks of California,
Inc.

Appendix A – Specific Comments on the draft Negative Declaration

1. Project Description

Comment: The Project Description in NextG's Application and the Draft Neg Dec do not match. In its Application to the Commission, NextG sought confirmation of previous approvals to construct a fiber-fed DAS network in the Cities of Huntington Beach, Westminster and Fountain Valley. The Project Description, provided on pages 8-9 of the Application, summarily describes the Project to include:

- Installation of approximately 9,848 linear feet (1.8 miles) of underground fiber in polyvinyl chloride conduit installed via trenching;
- Installation of approximately 148,676 linear feet (28.2 miles) of aerial fiber installed via utility poles;
- Installation of three new poles (and one replacement pole); and
- Installation of 15 communications nodes, repeater enclosures, fiber optic splice boxes, and electrical splice boxes.

The PEA accompanying the Application also describes the Project with the same detail pertaining to total underground fiber, aerial fiber, number of poles and nodes⁶ and analyzes the environmental impacts of the entire Project – including portions that have already been built.⁷ The initial Public Notice also provides the same project description.⁸ The Initial Study, however, only describes the Project as being within the “publicly owned right-of-way within the City of Huntington Beach.”⁹ Additionally, although the Draft Neg Dec concludes that “the project as proposed by NextG” would have no significant impacts on the environment,¹⁰ the Draft Neg Dec

E-8

E-9

⁶ See PEA at Section 3.

⁷ See, e.g., PEA at Section 4.1 (reviewing the aesthetic impact of the unbuilt and already built sections of the network); see also PEA at Section 4.3 (reviewing the air quality impact of the unbuilt and already built sections of the network).

⁸ See CPUC Notification of August 5, 2009 Public Meeting (including a project description that matched the project description in NextG's Application and PEA).

⁹ See Initial Study at Project Location, p. 1-1.

¹⁰ See Draft Neg Dec at Environmental Determination, p. 9.

E-9a

only describes the complete Project to include "15 nodes, approximately 112, 975 feet of aerial fiber cable, and approximately 8,696 feet of underground fiber cable."¹¹

While it is logical to focus the environmental assessment on the portions that have yet to be built, the descriptions of the Project should be consistent and should match those in the Application and the PEA. NextG requests the Commission review the Project descriptions in the Draft Neg Dec and Initial Study to ensure they are consistent with the materials provided in NextG's Application, or provide an explanation of the rationale in the Final Negative Declaration for narrowing the scope of the Project.

2. Project Sponsor

Comment: Project Sponsor should be changed to read: Sharon James, NextG Networks of California, Inc., 2216 O'Toole Avenue, San Jose, CA 95131, 408-426-6629.

3. Air Quality

Comment: The Initial Study addresses the Project's impacts on air quality and accurately concludes the project will have either no impact or less than significant impact.¹² However, the Initial Study refers to a policy of "maximum GHG reductions" for construction of a project in order to ensure that a project will not conflict with "the implementation of AB32,"¹³ and states that NextG will purchase offset credits for 30% of the estimated GHG emissions to ensure no conflicts "with the goals of AB32 or CPUC Policy."¹⁴

At this time AB 32 has not been implemented, nor has the CPUC Energy Division policy been published or formally issued by the Commission through a rulemaking proceeding. Consequently, there is no risk of this Project conflicting with AB 32 or any official Commission policy on this matter. Yet, to move this Project toward completion, and without committing to

¹¹ See, e.g., Draft Neg Dec at Project Description, p. 1.
¹² See Initial Study at Air Quality, pp. 4-21-4-29.
¹³ *Id.*, at p. 4-29.
¹⁴ *Id.*, and see Draft Neg Dec at Applicant Proposed Measure AQ-6, p. 4.



doing so on future similar projects, NextG has voluntarily agreed to purchase the stated level of offsets for this Project.

↑ E-13
(Cont.)

The Draft Neg Dec refers to both an "Energy Division Policy" and "CPUC Policy" of "maximum GHG reduction."¹⁵ However, because there is no officially adopted Commission Policy on this matter, NextG requests that the Draft Neg Dec be modified to clearly refer only to the Energy Division's informal policy of reducing GHG emissions, and not infer the adoption of a Commission policy to reduce GHG emissions.

E-14

4. Cultural Resources

Comment: Applicant Proposed Measure CR-1 states that "NextG will hire a cultural resources monitor to observe construction activities."¹⁶ This statement is not consistent with prior documentation and correspondence on the subject. Per NextG's Construction Protocol Measures at Appendix B to NextG's PEA, and the Applicant's October 5, 2009 response to Dudek, NextG will hire a cultural resources monitor only *if* cultural resources are encountered; "upon making a cultural resource finding, NextG will stop construction within 100 feet of the find, and consult with a qualified archaeologist to assess and develop appropriate measures."¹⁷ A similar reference is made in the Initial Study that "NextG will hire a cultural resources monitor to observe all earth-moving activities"¹⁸ NextG requests that the Commission correct such references and revise them to state that "if cultural resources are encountered, NextG will hire a cultural resources monitor."

E-15

¹⁵ See Initial Study, p.4-29.

¹⁶ See Draft Neg Dec at Cultural Resources, p. 6.

¹⁷ See October 5, 2009 Response to Dudek's Fourth Data Request at 1-2; and PEA at Appendix B, Section 3.1, Construction Protocols.

¹⁸ Initial Study at Section 4.5, Cultural Resources, p. 4-34.

E-14a
E-15a

5. Biological Resources

Comment: Applicant Proposed Measure BIO-2 provides that a "qualified biologist will survey project areas and establish exclusive zones around special-status plant populations or areas identified as suitable habitat for special-status plants that were not identifiable at the time of the field surveys."¹⁹ However, as detailed in NextG's construction protocol, such field survey was already conducted prior to the initiation of any construction on this Project, and therefore it will not be necessary to establish exclusion zones within the Project area.²⁰

E-16

¹⁹ See *id.*, at Biological Resources, p. 8.

²⁰ See PEA at Appendix B ("Construction Protocols"). See also PEA at Section 4.4.3.1, p. 4-55. ("no sensitive plant and wildlife species are known to occur within the immediate Project area").

E-16a

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**Response to Document E
Davis Wright Tremaine on behalf of NextG
(Suzanne Toller, Kerry Shea, Robert Millar)
Dated December 22, 2009**

- E-1** This comment is noted, no further response is provided or required.
- E-1a** This comment is noted, no further response is provided or required.
- E-2** This comment is noted, no further response is provided or required.
- E-2a** The application was deemed complete on April 3, 2009.
- E-2b** This comment is noted, no further response is provided or required.
- E-3** This comment is noted, no further response is provided or required.
- E-4** This comment is noted, no further response is provided or required.
- E-4a** This comment is noted, no further response is provided or required.
- E-4b** This comment is noted, no further response is provided or required.
- E-5** This comment is noted. The schedule will be determined by CPUC staff.
- E-6** Responses to comments in Appendix A are provided in responses E-8 through E-16.
- E-7** See response E-5.
- E-8** The proposed project is for the construction of facilities within the City of Huntington Beach. The Proponent's Environmental Assessment (PEA) described the entire project, which included the facilities within the Cities of Fountain Valley and Westminster. The facilities within those cities were already constructed pursuant to the existing Notice to Proceed and CE authority and therefore those impacts were not addressed within the IS/ND, which was the product of an agreement between NextG and the City of Huntington Beach and not required by CEQA. The mileage of aboveground aerial cable and underground cable were derived based on the information in the PEA.
- E-9** See response E-8.
- E-9a** This comment is noted, no further response is provided or required.
- E-9b** This comment is noted, no further response is provided or required.
- E-10** The IS/ND addresses the impacts of the proposed project within the City of Huntington Beach and includes both the constructed portion and the yet-to-be-constructed portion within the city. See also response E-8.
- E-11** The change in sponsor is noted; however, Robert Millar served as the primary contact with the CPUC.
- E-12** This comment is noted, no further response is provided or required..
- E-12a** This comment is noted, no further response is provided or required.

- E-13** CEQA Guidelines were amended as of December 31, 2009. The CPUC's Energy Division policy is consistent with those guidelines.
- E-14** See response E-13.
- E-14a** This comment is noted, no further response is provided or required.
- E-15** By definition of stopping work if cultural resources are encountered, the excavations will require monitoring to determine if cultural resources are found. It would not provide adequate protection to these resources if the determination of cultural resources were left to construction workers.
- E-15a** This comment is noted, no further response is provided or required.
- E-16** Biological resources, especially special-status plants, may not be visible during some periods of the year. Therefore, additional surveys may need to be conducted after initial surveys.
- E-16a** This comment is noted, no further response is provided or required.

Comment Letter F



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robmiller@dw.com

January 11, 2010
VIA U.S. MAIL AND EMAIL

Jensen Uchida
California Public Utilities Commission
505 Van Ness Avenue, 4A
San Francisco, CA 94102-3298

Re: Project Proponent's Further Comments on the Initial Study and Negative Declaration in Docket No. A.09-03-007


Dear Jensen:

Attached as Appendix A are further comments of the Project Proponent on the Initial Study and Negative Declaration in Docket No. 09-03-007. Per your request the comments and notes are limited to the Negative Declaration and Initial Study. Please note that these comments are not intended to supersede NextG's initial comments filed on December 22, 2009, as there are many comments in the initial submittal that are not repeated here. Please let me know if the Commission or Dudek need any further information as you complete your review and prepare the Final Negative Declaration.

}

F-1

Sincerely,

Davis Wright Tremaine LLP

Robert Miller

Enclosures

cc: Jason Reiger, CPUC
John Westemeier, Dudek

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Appendix A

*Project Proponent's Further Line Item Comments
on the Initial Study and Negative Declaration
Docket No. 09-03-007
(circulated November 19, 2009)*

Project History (P. 1)

NextG supports the current description of the Project History but requests that the Negative Declaration be clarified to note further that the Application filed by NextG in this proceeding was for additional environmental review and that the Categorical Exemption is still valid.

In this regard, NextG's Application sought confirmation of the previous authorization issued by the Commission:

Specifically, through this Application NextG seeks to confirm the authority it has received from the Commission to construct a Distributed Antenna System ("DAS") network ... and have the Commission review the Proponents Environmental Assessment ("PEA") filed herewith.¹

Furthermore, NextG never withdrew its previous categorical exemption granted by the Commission nor did the Commission ever withdraw it:

... NextG asserts that the entirety of the Project is exempt from CEQA and that NextG has already received the appropriate authorization from the Commission to construct the entirety of the Project through the NTP process, NextG stipulated to filing this Application in order to resolve the parties' remaining disputes in the Complaint Docket 08-04-037.²

Trenching (P. 2)

The description of trenching should be modified to read "2- to 3-foot-deep" instead of the current language of "1- to 2-foot-deep."

Excavation for New Poles (P. 3)

The description of excavation and foundation for new poles should be modified to indicate excavation and the new foundation will be approximately 4 feet wide, 4 feet long and 3 feet deep.

¹ NextG Application, p. 1.

² NextG Application, p. 2.

F-2

F-3

F-4

F-5

F-2a

F-3a

Biological Resources (P. 1-28, 4-32(d))

NextG believes that the sections regarding biological resources are accurate as written and require no modification. But if the Commission wishes to alter the description to provide more detail, it should clarify that the referenced survey was conducted prior to initial construction under the NTP issued by the Commission. NextG is unaware of any additional biological requirements that should be added to the proposed mitigation measures.

F-6

Scenic Vista (P. 4-11(a))

NextG believes the description regarding scenic vistas is accurate and does not require modification. However, if the Commission wishes to alter the description to provide more detail, it should clarify that Node 14 is to be constructed on the side of the street opposite the Pacific Ocean. Moreover, as noted in the visual simulation at Figure 1-1, the new steel pole for Node 14 blends in with the numerous other light poles, traffic signals, utility boxes and parking meters in the area. In addition, although Node 13 will be located on the Pacific Ocean side of the Pacific Coast Highway, it is to be located on an existing pole in the public right-of-way and is minimally visible.

F-7

Description of and Consistency Determination with the Wireless Ordinance (P. 4-53)

Although the portion of the Wireless Ordinance that is described is correct, it is incomplete. The Description of the Wireless Ordinance should be changed as follows:

230.96 Wireless Communications Facilities. Also known as the "Wireless Ordinance," this section of the local zoning code states, among other things that certain types of permits must be obtained including (depending on a number of factors) a Wireless Permit (230.96(D)), Conditional Use Permit (230.96(E)(2)) and, for facilities in the public right of way, an Encroachment Permit (230.96(F)(12)(a)). The Wireless Ordinance also requires that certain information be provided in applications for permits (Section 230.96(D)) and generally proposes standards that appear to be designed to minimize the visual impact of the wireless facilities (230.96(F)(12)(b)). "a--Any wireless communication facilities to be constructed on or beneath the public right-of-way must obtain an encroachment permit from the City and the applicant must provide documentation demonstrating that the applicant is a state franchise telephone corporation exempt from local franchise requirements," and "b.--All equipment associated with the operation of a facility, excepting antennas, shall be placed underground in those portions of the street, sidewalks, and public right-of-way where cable television, telephone or electric lines are underground." (City of Huntington Beach 2008b, Section 230.96-12).

F-8

The Consistency Determination in Table 4.9-1 also requires revision. The validity of Zoning Code Section 230.96 is the subject of ongoing litigation between NextG and the City of Huntington Beach. Significantly, the Commission has determined that "[t]his proceeding will not adjudicate the legal validity of City of [Huntington Beach's] undergrounding ordinance, wireless ordinance, or other ordinances or regulations adopted by the City of [Huntington Beach]." Joint Ruling of Assigned Commissioner and Assigned ALJ Regarding

F-9

**Comments Received and Responses to Comments
Next G Networks Inc. of California
Huntington Beach Distributed Antenna System Project**

Recategorization and Scoping Memo, at 15. What permits, if any, NextG will be required to obtain will be decided in that litigation. Rather than specifying the type of permit NextG will obtain or discussing undergrounding aspects of the Wireless Ordinance, the Consistency Determination should simply state the following:

The project is not considered to be a substantial conflict with Zoning Ordinance 230.96. The micro-antennas being used by NextG for the project are minimally visible and the associated facilities NextG proposes to construct will not result in a significant change from existing conditions. Moreover, the fact that materials submitted by NextG in support of the project do not contain all of the information that may be required in an application under the Wireless Ordinance does not create a conflict with the Wireless Ordinance.³ The project applicant shall obtain an encroachment permit from the City of Huntington Beach and will provide sufficient documentation demonstrating exemption status from local franchise requirements. The project has been modified to underground the new fiber-optic cable network wherever existing aboveground utility lines do not currently exist and to the extent feasible. The project includes adding one additional overhead cable where existing overhead utilities occur, along the existing publicly-owned right-of-way, and adding three new poles also within the existing publicly-owned right-of-way. The proposed project would not result in a significant change from existing conditions and is not considered to be a substantial conflict with Zoning Ordinance 230.96.

F-9
(Cont.)

Consistency Determination with the Undergrounding Ordinances (P. 4-53)

NextG believes the current description of the Undergrounding Ordinance and the Consistency Determination are accurate. However, to ensure complete accuracy, the Commission could change the Consistency Determination of the Undergrounding Ordinance (Municipal Code 17.64) to read:

The proposed project has been modified to underground the new fiber-optic cable network wherever existing aboveground utility lines do not currently exist and to the extent feasible. The project includes adding one additional overhead cable where adjacent to existing overhead utilities already occur, cables along the existing publicly owned right-of-way, and adding three new poles also within the existing right-of-way.

F-10

³ Moreover, to the extent the project presents any conflict with either Zoning Code Section 230.96 or Municipal Code 17.64, such a conflict does not dictate a mandatory finding of significant impact. The Resources Agency has determined that some kinds of physical impacts are necessarily significant pursuant to CEQA Guidelines. See CEQA Guidelines, at Sec. 15065 (outlining conditions of a mandatory finding of significance). Neither CEQA nor the CEQA Guidelines state that a conflict with local ordinance requires a mandatory finding of significant impact. Moreover, as previously briefed by NextG, when considering this issue California Courts have declined to find that, as a matter of law, a project's inconsistency with a local land use requirement is a potentially significant impact. See Reply of NextG to Protest of Huntington Beach, Dkt. No. A-09-03-007 (filed April 20, 2009) (citing *Lighthouse Field Beach Rescue v. City of Santa Cruz* (6th Dist. 2005) 131 Cal App. 4th 1170, at 1207 ("an inconsistency between a project and other land use controls does not in itself mandate a finding of significance")); The inconsistency with local permit requirements is merely one factor to be considered in determining whether a particular project will cause a significant impact on the environment; inconsistency with a local ordinance is not a "per se" significant effect.

F-9a

The project will not result in a significant change from existing conditions and is not considered to be a substantial conflict with Municipal Code 17.64.

↑
F-10
(Cont.)

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**Response to Document F
Davis Wright Tremaine on behalf of NextG (Robert Millar)
Dated January 11, 2010**

- F-1** This comment is noted. Responses to the December 22, 2009, letter referenced by the commenter are found in responses to Document E.
- F-2** This comment is noted, no further response is provided or required. See also response E-8.
- F-2a** This comment is noted, no further response is provided or required.
- F-3** This comment is noted, no further response is provided or required. See also response E-8.
- F-3a** This comment is noted, no further response is provided or required.
- F-4** In response to this comment, the description of installation of underground conduit and cable in the project description has been revised to say the trenches will be 2–3 feet deep, as follows:

Installation of Underground Conduit and Cable

Approximately 1,531 feet (0.29 mile) of underground cable have been installed and are operational. Approximately 7,165 feet (1.36 miles) of underground cable are proposed to be constructed. This would be accomplished through trenching of a ~~1- to 3-foot-deep~~ 2- to 3-foot-deep trench between 3 and 6 feet from the edge of the pavement. The cable would be placed within an approximately 2-inch-diameter conduit. Handholes would be placed where the cable would be spliced or where access to the cable would be required. Each handhole would be fitted with a traffic-rated lid.

This change does not create a new significant impact nor warrant recirculation.

- F-5** In response to this comment, the description of excavation and the foundation for new poles in the project description (under Pole Construction) has been modified to indicate that the size of the holes for the poles will be 4 feet wide, 4 feet long, and 3 feet deep. The text has been revised as follows:

Pole Construction

Construction of the two tapered steel poles and one concrete pole would involve the following steps:

- a) Staking the pole location
- b) Flagging the work area
- c) Installing silt fencing
- d) Preparing a crane pad

- e) Excavating an approximately 4-foot-wide, 4-foot-long, and 3-foot-deep ~~5- to 7-foot wide and 15- to 30-foot deep~~ hole
- f) Installing forms, rebar, and anchor bolts
- g) Pouring concrete for a foundation of 4 feet wide, 4 feet long, and 3 feet deep. ~~5 to 7 feet wide and 15 to 30 feet deep...~~

This change does not create a new significant impact nor warrant recirculation.

- F-6** The comment is noted, no further response is provided or required.
- F-7** This comment is noted; this description accurately describes the location of Nodes 13 and 14.
- F-8** The description in the IS accurately describes the Wireless Ordinance as described by the City. It is understood that this is a subject of current litigation. This comment is noted, no further response is provided or required.
- F-9** Comment noted. It is understood that provisions of the Wireless Ordinance are currently under litigation between the City and the applicant. The IS accurately describes the ordinance as represented by the City.
- F-9a** This comment is noted, no further response is provided or required.
- F-10** This comment is noted, no further response is provided or required.