

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877



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Staff: Melissa B. Kraemer
Staff Report: March 20, 2009
Hearing Date: April 10, 2009
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-08-037**

APPLICANT: **Pacific Gas & Electric Company**

PROJECT LOCATION: Along four segments of existing natural gas transmission pipeline right-of-ways along four segments of Highway 101 between the Van Duzen River south of the community of Alton and the City of Arcata, in Humboldt County: Segment 1 is 445-ft-long by 10-ft-wide located north of the Van Duzen River along west shoulder of Highway 101, between the highway and a gravel road that accesses the river; Segment 2 is 2,000-ft-long by 40-ft-wide located north of the Highway 36/Highway 101 intersection along the eastern right of way of Highway 101; Segment 3 is 4,000-ft-long by 50-ft-wide located between the Fernbridge & Palmer Road exits along the western right-of-way of Highway 101; and Segment 4 is 560-ft-long by 10-ft-wide located along the west shoulder of the G Street on-ramp to Highway 101 in Arcata.

PROJECT DESCRIPTION: Multi-year authorization for on-going maintenance of over six acres of woody vegetation across the four right-of-way segments on an as needed basis using hand tools (e.g., chain saws, loppers, etc.) to clear vegetation to within 6 inches of ground level along Segments 1, 2, and 3, and to prune back woody vegetation and remove one large conifer tree along Segment 4.

APPROVALS RECEIVED: Caltrans Encroachment Permit No. 0108-6-LM-0221

OTHER APPROVALS NEEDED: None

SUBSTANTIVE FILE Humboldt County Local Coastal Program
DOCUMENTS:

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval with special conditions of the proposed development.

The proposed project is located along existing high pressure natural gas transmission pipeline right-of-ways along four segments of Highway 101 between the Van Duzen River south of the community of Alton and the City of Arcata, in Humboldt County (Exhibit Nos. 1 through 4). The development involves on-going maintenance clearing of vegetation along the existing gas lines as needed to (1) allow the lines to be adequately surveyed and tested for leaks, (2) keep the right-of-ways clear of deep rooted vegetation that has the potential to damage the protective “rap” around the gas pipes (which protects the pipes from corrosion), (3) support aerial surveys of the lines, and (4) facilitate a quicker response time and repair of the lines in the event of an emergency.

Areas proposed for woody vegetation maintenance in each of the four segments are as follows (and see Exhibit No. 4): Segment 1 is 445-ft-long by 10-ft-wide (5-ft on either side of the gas line) located north of the Van Duzen River along west shoulder of Highway 101, between the highway and a gravel road that accesses the river; proposed Segment 2 is 2,000-ft-long by 40-ft-wide located north of the Highway 36/Highway 101 intersection along the eastern right-of-way of Highway 101; proposed Segment 3 is 4,000-ft-long by 50-ft-wide located between the Fernbridge & Palmer Road exits along the western right-of-way of Highway 101; and proposed Segment 4 is 560-ft-long by 10-ft-wide (along the eastern half of the right-of-way only) located along the west shoulder of the G Street on-ramp to Highway 101 in Arcata.

As part of its on-going maintenance, PG&E proposes to clear woody vegetation (trees, shrubs, and brambles) manually with chainsaws along Segments 2 and 3 and a portion of Segment 1 to within 6 inches of ground level, lop it in place, and scatter or chip and scatter the “spoils” within the right-of-ways. Along Segment 4, which is adjacent to an intermittent watercourse, PG&E proposes to manually prune back vegetation (mostly willow branches) growing along the eastern side of the right-of-way within 10-feet of the gas line centerline. Pruned branches would be fed through a chipper, loaded onto a truck, and hauled away from the site. Additionally, one large conifer tree growing over the gas line would be cut down and hauled off site for disposal. Along Segment 1, which contains riparian habitat connected to the Van Duzen River riparian complex, PG&E proposes to remove the understory Himalayan blackberries and other non-native vegetation within a 10-ft wide right-of-way swath (five feet to each side of the gas line) and to limit native woody vegetation (trees/shrubs) removal to a distance of 4 feet from the gas pipeline centerline. PG&E proposes to leave intact (except for trimming to allow foot passage) native woody vegetation located within the right-of-way that is further than 4 feet from the centerline.

This approach is expected to minimize the number of tree saplings that are removed yet still allow foot access along the alignment.

In addition to the proposed on-going maintenance, the applicant is seeking after-the-fact authorization for clearing approximately 3.7 acres of vegetation (primarily blackberry, poison oak, and Pampas grass) in Segment 3 and 0.07-acre of vegetation (primarily blackberry and poison oak) in Segment 1 in 2007 without the benefit of a coastal development permit.

The proposed vegetation clearing along the four segments involves a risk of substantial adverse environmental impact pursuant to Section 30610 of the Coastal Act and Section II-B-1-e of the 1978 Utility Exclusions because it involves clearing more than 500 square feet (0.01-acre) of brush or other vegetation within 50 feet of an ESHA (riparian habitat in the case of Segments 1 and 4) and within 20 feet of coastal waters (in the case of Segment 4). The proposed vegetation maintenance project therefore requires a coastal development permit under Section 30610 of the Coastal Act, Section II-B-1-e of the 1978 Utility Exclusions, and Section 13252 of the Commission regulations.

In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed method of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. The Commission's evaluation of such repair and maintenance projects does not extend to an evaluation of the conformity with the Coastal Act of the underlying existing development (in this case the installation of natural gas pipelines).

Both Segments 1 and 4 contain riparian habitat with the potential for use by a variety of bird and amphibian species (see Exhibit No. 5). Thus, the proposed on-going maintenance is located within and adjacent to riparian and wetland ESHA. Staff believes that vegetation clearing in Segments 1 and 4 during the bird nesting season (typically March 1 through August 15) could adversely affect sensitive nesting birds such as raptors and nesting birds protected under the Migratory Bird Treaty Act (MBTA). Thus, to ensure that the proposed annual vegetation maintenance work does not result in significant disruption or degradation of occupied nesting habitat and is compatible with the continuance of such habitat consistent with the requirements of Section 30240 of the Coastal Act, staff recommends Special Condition No. 1. This condition would require that, prior to commencement of vegetation maintenance operations in any year in which vegetation maintenance is proposed for the period between March 1 and August 15, the permittee shall submit a final Nesting Bird Protection Plan for the review and approval of the Executive Director, which addresses bird nesting and roosting habitat in the project area. The plan would provide that the areas proposed for vegetation maintenance during nesting seasons along Segments 1 and 4 will be surveyed by a qualified biologist for the presence of active nesting and/or roosting habitat prior to commencement of vegetation maintenance activities, and any bird nesting and/or roosting trees located in areas of potential impact shall be avoided.

The applicant has proposed various measures to reduce impacts to the riparian habitat in the project area such as only pruning a portion of the riparian habitat along Segment 4, and in Segment 1 leaving intact native trees and shrubs located four feet or more from the gas line

centerline, and only limbing as necessary for foot access purposes branches lower than 6 feet in height beyond the 8-foot clearing swath. Staff believes that to ensure that the vegetation maintenance work is compatible with the continuance of riparian habitat consistent with the requirements of Section 30240, Special Condition No. 2 is necessary. This condition would require PG&E to adhere to certain vegetation maintenance responsibilities including, among other things, no herbicide use in the project area.

The applicant has requested authorization to undertake vegetation management activities on an annual basis as needed for a period of ten years. Staff recommends Special Condition No. 3, which would limit the authorized development to five years, but would grant the Executive Director the authority to approve a request for an additional five years of vegetation management operations provided that the request would not substantively alter the project description and/or potentially require modifications of the conditions due to new information or technology or other changed circumstances.

Staff believes that the proposed project, as conditioned, is consistent with all applicable policies of the Coastal Act.

The Motion to adopt the Staff Recommendation is found on Page 5.

STAFF NOTES

1. Jurisdiction & Standard of Review

The proposed project area is bisected by the boundary between the retained coastal development permit (CDP) jurisdiction of the Commission and the CDP jurisdiction delegated to Humboldt County by the Commission through the County's certified Local Coastal Program. Segments 1 and 4 are located entirely within the retained CDP jurisdiction of the Commission (see Exhibit No. 3). Segments 2 and 3 are located entirely within the County's permit jurisdiction (see Exhibit No. 3).

The Coastal Act was amended by Senate Bill 1843 in 2006, effective January 1, 2007. The amendment added Section 30601.3 to the Coastal Act. Section 30601.3 authorizes the Commission to process a consolidated coastal development permit application when requested by the local government and the applicant and approved by the Executive Director for projects that would otherwise require coastal development permits from both the Commission and from a local government with a certified LCP. In this case, the Humboldt County Board of Supervisors adopted a resolution and both the applicants and the County submitted letters requesting consolidated processing of the coastal development permit application by the Commission for the subject project, which was approved by the Executive Director.

The policies of Chapter 3 of the Coastal Act provide the legal standard of review for a consolidated coastal development permit application submitted pursuant to Section 30601.3. The local government's certified LCP may be used as guidance.

I. MOTION, STAFF RECOMMENDATION, & RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve Coastal Development Permit No. 1-08-037 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or (2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See Appendix A.

III. SPECIAL CONDITIONS:

1. Final Nesting Bird Protection Program

- A. **PRIOR TO COMMENCEMENT OF ANY VEGETATION MAINTENANCE OPERATIONS AFTER APRIL 10, 2009**, the permittee shall submit, for the review and approval of the Executive Director, a final Nesting Bird Protection Program, prepared by a qualified biologist, for conducting seasonal surveys for bird nesting and roosting habitat in Segments 1 and 4 of the project area and protecting such habitat from project impacts. The protection program shall, at a minimum, include the following:

- 1) Provisions for surveying for the presence of active nesting and/or roosting habitat, by a qualified biologist, the areas proposed for vegetation maintenance during the nesting season (March 1 through August 15) along Segments 1 and 4 each nesting season that vegetation maintenance is proposed prior to the commencement of that season's vegetation maintenance work during the length of the development authorized by this permit;
 - 2) Provisions for avoiding any bird nesting and/or roosting trees located in areas of potential impact; and
 - 3) Provisions for submission of the surveys of nesting and roosting habitat required above for the review and approval of the Executive Director prior to the commencement of that season's vegetation maintenance work that includes a map that locates any sensitive habitat identified by the survey, and a narrative that describes sensitive avoidance measures proposed;
- B. The permittee shall undertake development in accordance with the approved final nesting bird protection program and the approved season surveys. Any proposed changes to the approved final nesting bird protection program and the approved season surveys shall be reported to the Executive Director. No changes to the approved final nesting bird protection program and the approved season surveys shall occur without an amendment to Coastal Development Permit No. 1-08-037, unless the Executive Director determines that no amendment is legally required.

2. Vegetation Maintenance Responsibilities

The permittee shall comply with the following vegetation maintenance-related responsibilities:

- A. Vegetation maintenance activities along Segment 1 north of the Van Duzen River along the west shoulder of Highway 101 shall be limited to a 445-foot-long by 8-foot-wide swath centered on the gas pipeline and shall be limited to (i) trimming non-woody vegetation with hand-held tools, (ii) cutting down with chainsaws woody vegetation with stems or trunks located within the 8-foot-wide swath to within 6 inches of ground level, (iii) trimming with chainsaws or other hand held tools the portions of branches of other woody vegetation with stems or trunks located outside of the 8-foot-wide swath that overhang the 8-foot-wide swath and are below 6 feet above ground level, and (iv) hauling plant remains off-site for composting or disposal at an authorized facility or scattering or chipping and scattering the plant remains within the PG&E right-of-way;
- B. Vegetation maintenance activities along Segment 2 north of the Highway 101/36 interchange along the eastern right-of-way of Highway 101 shall be limited to a 2,000-foot-long by 40-foot-wide swath along the gas pipeline and shall be limited to (i) trimming non-woody vegetation with hand held tools, (ii) cutting down with chainsaws woody vegetation with stems or trunks located within the 40-foot-wide swath to within 6 inches of ground level, and (iii) hauling plant remains off-site for composting or disposal at an authorized facility or scattering or chipping and scattering the plant remains within the PG&E right-of-way;

- C. Vegetation maintenance activities along Segment 3 between the Fernbridge & Palmer Road exits along the western right-of-way of Highway 101 shall be limited to a 4,000-foot-long by 50-foot-wide swath along the gas pipeline and shall be limited to (i) trimming non-woody vegetation with hand held tools, (ii) cutting down with chainsaws woody vegetation with stems or trunks located within the 50-foot-wide swath to within 6 inches of ground level, and (iii) hauling plant remains off-site for composting or disposal at an authorized facility or scattering or chipping and scattering the plant remains within the PG&E right-of-way;
- D. Vegetation maintenance activities along Segment 4 located along the west shoulder of the South G Street on-ramp to Highway 101 in Arcata shall be limited to a 560-foot-long by 10-foot-wide swath along the northeast side of the centerline of the gas pipeline and shall be limited to (i) trimming with hand tools non-woody vegetation the minimum amount necessary for pedestrian access to the gas pipeline for necessary repair and maintenance purposes, (ii) trimming with chainsaws or other hand held tools the portions of branches of other woody vegetation that are within or overhang the 10-foot-wide swath and are below 6 feet above ground level the minimum amount necessary for pedestrian access to the gas pipeline for necessary repair and maintenance purposes, (iii) completely removing one large conifer tree growing over the gas pipeline, and (iv) hauling all plant remains off-site for composting or disposal at an authorized facility;
- E. No herbicides shall be used within any portion of the project area; and
- F. Maintenance protocols and project activities shall conform to all provisions specified in Special Conditions Nos. 1 through 4 of Coastal Development Permit No. 1-08-037.

3. Length of Development Authorization

Development authorized by this permit is valid for five (5) years from the date of Commission approval (until April 10, 2014). One request for an additional five-year period of development authorization may be accepted, reviewed, and approved by the Executive Director for a maximum total of ten (10) years of development authorization (until April 10, 2019), provided that the request would not substantively alter the project description and/or potentially require modifications of conditions due to new information or technology or other changed circumstances. The request for an additional five-year period of development authorization shall be made prior to April 10, 2014. If the request for an additional five-year period would substantively alter the project description and/or potentially require modifications of conditions due to new information or technology or other changed circumstances, an amendment to this permit will be necessary. All vegetation maintenance operations proposed after April 10, 2019, or after 2014 if no additional five-year period of authorization has been granted by the Executive Director or amendment has been obtained, shall require a new coastal development permit.

4. Permit Expiration & Condition Compliance

Because some of the proposed development has already commenced, this coastal development permit shall be deemed issued upon the Commission's approval and will not expire. Failure to

comply with the special conditions of this permit may result in the institution of an action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS & DECLARATIONS

The Commission hereby finds and declares as follows:

A. Environmental Setting & Project Description

The proposed project is located along existing high pressure natural gas transmission pipeline right-of-ways along four segments of Highway 101 between the Van Duzen River south of the community of Alton and the City of Arcata, in Humboldt County (Exhibit Nos. 1 through 4). The development involves on-going maintenance clearing of vegetation along the existing gas lines as needed to (1) allow the lines to be adequately surveyed and tested for leaks, (2) keep the right-of-ways clear of deep rooted vegetation that has the potential to damage the protective “rap” around the gas pipes (which protects the pipes from corrosion), (3) support aerial surveys of the lines, and (4) facilitate a quicker response time and repair of the lines in the event of an emergency.

Areas proposed for woody vegetation maintenance in each of the four segments are as follows (and see Exhibit No. 4): Segment 1 is 445-ft-long by 10-ft-wide (5-ft on either side of the gas line) located north of the Van Duzen River along west shoulder of Highway 101, between the highway and a gravel road that accesses the river; proposed Segment 2 is 2,000-ft-long by 40-ft-wide located north of the Highway 36/Highway 101 intersection along the eastern right-of-way of Highway 101; proposed Segment 3 is 4,000-ft-long by 50-ft-wide located between the Fernbridge & Palmer Road exits along the western right-of-way of Highway 101; and proposed Segment 4 is 560-ft-long by 10-ft-wide (along the eastern half of the right-of-way only) located along the west shoulder of the G Street on-ramp to Highway 101 in Arcata.

The gas line right-of-way (ROW) widths of each of the four project area segments are somewhat wider than the width of the actual corridors where vegetation management activities would occur. The Rio Dell DFM gas line ROW along Segment 1 is 15 feet wide. The 177 gas line ROW along Segments 2 and 3 is 50 feet wide. The 137B gas line ROW along Segment 4 is 20 feet wide.

As part of its on-going maintenance, PG&E proposes to clear woody vegetation (trees, shrubs, and brambles) manually with chainsaws along Segments 2 and 3 and a portion of Segment 1 to within 6 inches of ground level, lop it in place, and scatter or chip and scatter the “spoils” within the right-of-ways. Along Segment 4, which is adjacent to an intermittent watercourse, PG&E proposes to manually prune back vegetation (mostly willow branches) growing along the eastern side of the right-of-way within 10-feet of the gas line centerline. Pruned branches would be fed through a chipper, loaded onto a truck, and hauled away from the site. Additionally, one large conifer tree growing over the gas line would be cut down and hauled off site for disposal. Along Segment 1, which contains riparian habitat connected to the Van Duzen River riparian complex,

PG&E proposes to remove the understory Himalayan blackberries and other non-native vegetation within a 10-ft wide right-of-way swath (five feet to each side of the gas line) and to limit native woody vegetation (trees/shrubs) removal to a distance of 4 feet from the gas pipeline centerline. PG&E proposes to leave intact (except for trimming to allow foot passage) native woody vegetation located within the right-of-way that is further than 4 feet from the centerline. This approach is expected to minimize the number of tree saplings that are removed yet still allow foot access along the alignment.

Additionally, the applicant is seeking after-the-fact authorization for clearing approximately 3.7 acres of vegetation (primarily blackberry, poison oak, and Pampas grass) in Segment 3 and 0.07-acre of vegetation (primarily blackberry and poison oak) in Segment 1 in 2007 without the benefit of a coastal development permit.

Existing vegetation in Segments 2 and 3 consists mostly of coyote brush (*Baccharis pilularis*), poison oak (*Toxicodendron diversilobum*), blackberry (*Rubus* spp.), and Pampas grass (*Cortaderia selloana*). Existing vegetation in Segment 1, which lies at the edge of the riparian complex associated with the Van Duzen River, consists of blackberry, poison oak, willow (*Salix* sp.), and red alder (*Alnus rubra*). Existing vegetation in Segment 4, which parallels an intermittent watercourse adjacent to the Arcata Marsh & Wildlife Sanctuary, consists of mostly of willow, blackberry, cascara (*Rhamnus purshiana*), and coyote brush. Both Segments 1 and 4 contain environmentally sensitive riparian habitat with the potential for use by a variety of bird and amphibian species (see Exhibit No. 5).

The applicant is seeking multiyear authorization for the proposed work, which is summarized in Table 1 below.

Table 1. The applicant is seeking multi-year authorization for vegetation maintenance along four segments of existing natural gas transmission pipeline right-of-ways adjacent to Highway 101 between the Van Duzen River and Arcata in Humboldt County.

Segment No. & Gas Line (G/L) ID	Location	Gas Line Right-of-way Width	Area Proposed for Clearing	Proposed Methods
Segment 1 G/L Rio Dell DFM	north of Van Duzen River along west shoulder of Hwy 101	15 ft	445-ft-long by 10-ft-wide	clear woody vegetation (trees, shrubs, and brambles) manually with chainsaws to within 6 inches of ground level, lop it in place, and scatter or chip and scatter the “spoils” within the right-of-ways; leave woody native vegetation beyond 4 feet on either side of the gas line centerline
Segment 2 G/L 177	north of the Hwy 36/Hwy 101 intersection along the eastern right of way of Hwy 101	50 ft	2,000-ft-long by 40-ft-wide	clear woody vegetation manually with chainsaws to within 6 inches of ground level, lop it in place, and scatter or chip and scatter the “spoils” within the right-of-ways
Segment 3 G/L 177	between the Fernbridge & Palmer Road exits along the western right of way of Hwy 101	50 ft	4,000-ft-long by 50-ft-wide	
Segment 4 G/L 137B	along the west shoulder of the G Street on-ramp to Hwy 101 in Arcata	20 ft	560-ft-long by 10-ft-wide	manually prune woody vegetation growing along the eastern side of the right-of-way within 10-feet of the gas line centerline, completely remove one large conifer tree growing over the gas line, and chip and haul all spoils off site for disposal.

B. Permit Authority, Extraordinary Methods of Repair & Maintenance

1. Applicable Coastal Act Policies & Standards

Coastal Act Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of, the structure being repaired or maintained. However, the Commission retains

authority to review certain “extraordinary methods” of repair and maintenance of existing structures that involve “a risk of substantial adverse environmental impact” as enumerated in Section 13252 of the Commission regulations.

Section 30610 of the Coastal Act provides, in relevant part, for the following:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: . . .

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter. [Emphasis added]

Section 13252 of the Commission administrative regulations (14 CCR 13000 *et seq.*) provides, in relevant part, for the following (emphasis added):

(a) For purposes of Public Resources Code section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:...

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in Public Resources Code section 30700 unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean....

Section II-B-1-e of the document entitled “Repair, Maintenance and Utility Hookup Exclusions from Permit Requirements” adopted by the Commission on September 5, 1978 states the following, in relevant part:

e. Grading and Clearing. Maintenance activities shall not extend to the construction of any new roads to the site of the work. A permit is required for grading an undisturbed area of

greater than 500 sq. ft., removal of trees exceeding 12 inches dbh or clearing more than 500 sq. ft. of brush or other vegetation...

2. Consistency Analysis

The proposed project involves on-going vegetation management activities along existing natural gas pipelines as needed to (1) allow the lines to be adequately surveyed and tested for leaks, (2) keep the right-of-ways clear of deep rooted vegetation that has the potential to damage the protective “rap” around the gas pipes (which protects the pipes from corrosion), (3) support aerial surveys of the lines, and (4) facilitate a quicker response time and repair of the lines in the event of an emergency. Section 30610 of the Coastal Act, Section 13252 of the Commission’s administrative regulations, and the “Repair, Maintenance, and Utility Hook-Up Exclusions from Permit Requirements” guidelines (1978 Utility Exclusions) adopted by the Commission in 1978 provide for the exemption of certain types of repair and maintenance projects from CDP requirements, unless certain “*extraordinary methods of repair and maintenance*” enumerated in the regulation could “*involve a risk of substantial adverse environmental impact.*”

The proposed vegetation clearing along the four segments involves a risk of substantial adverse environmental impact pursuant to Section 30610 of the Coastal Act and Section II-B-1-e of the 1978 Utility Exclusions because it involves clearing more than 500 square feet (0.01-acre) of brush or other vegetation within 50 feet of an ESHA (riparian habitat in the case of Segments 1 and 4) and within 20 feet of coastal waters (in the case of Segment 4). The applicant proposes to clear over 4,450 square feet (0.10-acre) of vegetation in Segment 1, 80,000 square feet (1.84 acres) of vegetation in Segment 2, over 200,000 square feet (4.59 acres) of vegetation in Segment 3, and 5,600 square feet (0.13-acre) of vegetation in Segment 4. The proposed vegetation maintenance project therefore requires a coastal development permit under Section 30610 of the Coastal Act, Section II-B-1-e of the 1978 Utility Exclusions, and Section 13252 of the Commission regulations.

In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed method of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. The Commission’s evaluation of such repair and maintenance projects does not extend to an evaluation of the conformity with the Coastal Act of the underlying existing development (in this case the installation of natural gas pipelines).

The proposed vegetation maintenance of the existing natural gas transmission line right-of-ways could have adverse impacts on coastal resources, in this case primarily riparian and wetland habitats, if not properly undertaken with appropriate mitigation. The Applicant proposes to clear woody vegetation (trees, shrubs, and brambles) manually with chainsaws along Segments 1, 2, and 3 to within 6 inches of ground level, lop it in place, and scatter or chip and scatter the “spoils” within the right-of-ways. At Segment 4, which is adjacent to an intermittent watercourse, PG&E proposes to manually prune back vegetation (mostly willow branches) growing along the eastern side of the right-of-way within 10-feet of the gas line centerline. Pruned branches would be fed through a chipper, loaded onto a truck, and hauled away from the

site. Additionally, one large conifer tree growing over the gas line would be cut down and hauled off site for disposal. Work will be performed on an as-needed basis over a period of multiple years for the various reasons described above.

The applicant has proposed minimization measures as part of its proposal to avoid or minimize potential impacts of the vegetation maintenance on environmentally sensitive habitat areas (ESHA). The applicant proposes to conduct the work with manual tools (e.g., chainsaws and loppers) rather than mechanized equipment and to only clear the minimum width necessary at Segments 1 and 4 to achieve the stated project objectives while minimizing impacts to environmentally sensitive habitats. Nevertheless, the Commission recommends various conditions to ensure that the project is consistent with Coastal Act policies protecting environmentally sensitive habitat areas, as discussed in the following findings.

Therefore, as conditioned in these Findings, the Commission finds that the proposed project is consistent with the Chapter 3 policies of the Coastal Act.

C. Environmentally Sensitive Habitat Areas (ESHA)

1. Applicable Coastal Act Policies & Standards

Coastal Act Section 30240 states as follows:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

2. Consistency Analysis

As described above, existing vegetation in Segment 1, which lies at the edge of riparian habitat of the Van Duzen River, consists of blackberry, poison oak, willow, and red alder (*Alnus rubra*). Existing vegetation in Segment 4, which parallels an intermittent watercourse adjacent to the Arcata Marsh & Wildlife Sanctuary, consists of mostly of willow, blackberry, cascara, and coyote brush. Both Segments 1 and 4 contain riparian habitat with the potential for use by a variety of bird and amphibian species (see Exhibit No. 5). Thus, the proposed project is located within and adjacent to riparian and wetland ESHA.

As described above, the proposed project involves clearing woody vegetation manually with chainsaws along Segments 2 and 3 and a portion of Segment 1 (an 8-foot wide swath) to within 6 inches of ground level, lopping it in place, and scattering or chipping and scattering the “spoils” within the right-of-ways. Along Segments 1 and 4, which contain environmentally sensitive riparian habitats, the applicant has proposed measures to minimize vegetation clearing to

maintain functionally intact habitats. Along Segment 1, vegetation clearing will be minimized by (1) limiting vegetation clearing to an 8-foot-wide swath (4 feet on either side of the centerline of the gas pipeline) and leaving intact native woody vegetation beyond a distance of 4 feet from either side of the gas line centerline, and (2) minimizing limbing of native woody vegetation within the gas line right-of-way beyond the proposed 8-foot clearing swath (4-ft on either side of centerline) by limiting any necessary limbing (for foot access purposes) to below 6 feet in height only so that the canopies of larger woody vegetation are left functionally intact for habitat use. Along Segment 4, the applicant proposes to manually prune back vegetation (mostly willow branches) growing along the eastern half of the 20-foot-wide right-of-way within 10-feet of the gas line centerline. Pruned branches would be fed through a chipper, loaded onto a truck, and hauled away from the site.

Despite these proposed minimization measures, the Commission finds that vegetation clearing in Segments 1 and 4 during the bird nesting season (typically March 1 through August 15) could adversely affect sensitive nesting birds such as raptors and nesting birds protected under the Migratory Bird Treaty Act (MBTA). Staff noted, on a site visit conducted in January, an old bird nest within the area proposed for clearing in Segment 1 (see Exhibit No. 5). Thus, to ensure that the proposed annual vegetation maintenance work does not result in significant disruption or degradation of occupied nesting habitat and is compatible with the continuance of such habitat consistent with the requirements of Section 30240 of the Coastal Act, the Commission attaches Special Condition No. 1. This condition requires that, prior to commencement of vegetation maintenance operations in any year in which vegetation maintenance is proposed for the period between March 1 and August 15, the permittee shall submit a final Nesting Bird Protection Plan for the review and approval of the Executive Director, which addresses bird nesting and roosting habitat in the project area. The plan must provide that the areas proposed for vegetation maintenance during nesting seasons along Segments 1 and 4 will be surveyed by a qualified biologist for the presence of active nesting and/or roosting habitat prior to commencement of vegetation maintenance activities, and any bird nesting and/or roosting trees located in areas of potential impact shall be avoided.

The applicant has proposed various measures to reduce impacts to the riparian habitat in the project area. The applicant is proposing only to prune a portion of the riparian habitat along Segment 4. Likewise along Segment 1, the applicant is proposing to reduce impacts to the riparian habitat by leaving intact native trees and shrubs located four feet or more from the gas line centerline, and only limbing as necessary for foot access purposes branches lower than 6 feet in height beyond the 8-foot clearing swath. Although the applicant proposes measures to reduce impacts to the riparian habitat, the proposed measures do not sufficiently protect the riparian habitat. For instance, the proposed measures would not preclude trimming and removal of the canopy high above the gas line, which could be utilized as nesting habitat and provide cover for other wildlife using the riparian habitat. Furthermore, such trimming and removal is not necessary for maintenance purposes, as sufficient access to the site for repairs could be gained by only clearing branches 6 feet above ground level or lower, and PG&E has indicated that aerial surveys of these segments of the gas line are not necessary. Thus, the Commission finds that to ensure that the vegetation maintenance work is compatible with the continuance of riparian habitat consistent with the requirements of Section 30240, the Commission attaches Special

Condition No. 2. This condition requires PG&E to adhere to certain vegetation maintenance responsibilities, including the following:

- Vegetation maintenance activities along Segment 1 north of the Van Duzen River along the west shoulder of Highway 101 shall be limited to a 445-foot-long by 8-foot-wide swath centered on the gas pipeline and shall be limited to (i) trimming non-woody vegetation with hand-held tools, (ii) cutting down with chainsaws woody vegetation with stems or trunks located within the 8-foot-wide swath to within 6 inches of ground level, (iii) trimming with chainsaws or other hand held tools the portions of branches of other woody vegetation with stems or trunks located outside of the 8-foot-wide swath that overhang the 8-foot-wide swath and are below 6 feet above ground level, and (iv) hauling plant remains off-site for composting or disposal at an authorized facility or scattering or chipping and scattering the plant remains within the PG&E right-of-way.
- Vegetation maintenance activities along Segment 2 north of the Highway 101/36 interchange along the eastern right-of-way of Highway 101 shall be limited to a 2,000-foot-long by 40-foot-wide swath along the gas pipeline and shall be limited to (i) trimming non-woody vegetation with hand held tools, (ii) cutting down with chainsaws woody vegetation with stems or trunks located within the 40-foot-wide swath to within 6 inches of ground level, and (iii) hauling plant remains off-site for composting or disposal at an authorized facility or scattering or chipping and scattering the plant remains within the PG&E right-of-way.
- Vegetation maintenance activities along Segment 3 between the Fernbridge & Palmer Road exits along the western right-of-way of Highway 101 shall be limited to a 4,000-foot-long by 50-foot-wide swath along the gas pipeline and shall be limited to (i) trimming non-woody vegetation with hand held tools, (ii) cutting down with chainsaws woody vegetation with stems or trunks located within the 50-foot-wide swath to within 6 inches of ground level, and (iii) hauling plant remains off-site for composting or disposal at an authorized facility or scattering or chipping and scattering the plant remains within the PG&E right-of-way.
- Vegetation maintenance activities along Segment 4 located along the west shoulder of the South G Street on-ramp to Highway 101 in Arcata shall be limited to a 560-foot-long by 10-foot-wide swath along the northeast side of the centerline of the gas pipeline and shall be limited to (i) trimming with hand tools non-woody vegetation the minimum amount necessary for pedestrian access to the gas pipeline for necessary repair and maintenance purposes, (ii) trimming with chainsaws or other hand held tools the portions of branches of other woody vegetation that are within or overhang the 10-foot-wide swath and are below 6 feet above ground level the minimum amount necessary for pedestrian access to the gas pipeline for necessary repair and maintenance purposes, (iii) completely removing one large conifer tree growing over the gas pipeline, and (iv) hauling all plant remains off-site for composting or disposal at an authorized facility.
- No herbicides shall be used within any portion of the project area; and
- Maintenance protocols and project activities shall conform to all provisions specified in Special Conditions Nos. 1 through 4 of Coastal Development Permit No. 1-08-037.

The applicant is not proposing mitigation for the loss of riparian vegetation resulting from the proposed maintenance vegetation activities. However, with the proposed measures to reduce impacts to the riparian vegetation as further reduced by the requirements of Special Condition Nos. 1 and 2, the development as conditioned is designed to prevent impacts that would significantly degrade the riparian vegetation and is compatible with the continuance of the riparian vegetations. With the limitations on pruning and clearing the vegetation, habitat area and functions will be maintained. For example, preserving the tree canopy will retain opportunities for nesting and provide cover for other animals, and the affected riparian vegetation in Segment 1 will be surrounded by undisturbed riparian vegetation, which will similarly maintain cover and provide opportunities for nesting and roosting. As the approved vegetation maintenance activities as conditioned will not result in significant disruption or degradation of the riparian habitat and will be compatible with the continuance of the riparian habitat area and functions, the Commission finds that the development, as conditioned, is consistent with Section 30240 of the Coastal Act.

D. Public Access

1. Applicable Coastal Act Policies and Standards:

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Coastal Act Section 30210 requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Section 30211 requires in applicable part that development not interfere with the public's right of access to the sea where acquired through use (i.e., potential prescriptive rights or rights of implied dedication). Section 30212 requires in applicable part that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances, such as when adequate access exists nearby or when the provision of public access would be inconsistent with public safety. In applying Sections 30211 and 30212, the Commission is limited by the need to show that any denial of a permit application based on these sections or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential public access.

2. Consistency Analysis:

A portion of the proposed project area, Segment 4, is located between the sea (Arcata Bay) and the first designated through public road (South G Street), and another portion, Segment 1, is located between the first public road (Highway 101) and an arm of the sea, the Eel and Van Duzen rivers. The Segment 1 work is adjacent to a gravel road that provides public access to the Van Duzen River within the Caltrans right-of-way which was required to be maintained and improved for public access in the conditions of approval of Coastal Development Permit No. 1-07-038. The proposed development will not require closure of any roads during construction, including the gravel road adjacent to Segment 1 that provides access to the Van Duzen River. There are no trails within the immediate vicinity of the two project segments that would be

affected by the project. In addition, the proposed development would not create any new demand for public access or otherwise create any additional burdens on public access.

Therefore, the Commission finds that the proposed project will not have an adverse effect on public access, and the project, as proposed, is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212.

E. Period of Authorization

The applicant has requested authorization to undertake vegetation management activities on an annual basis as needed for a period of ten years. The Commission has, on occasion, granted special districts multi-year permits for such activities (e.g., CDP No. 3-04-72 Moss Landing Harbor District routine pier replacement; CDP No. 3-00-034 Santa Cruz Port District routine maintenance dredging; CDP No. 3-02-047 Monterey Harbor routine operations and maintenance; CDP No. 1-03-004 Reclamation District levee repair and maintenance; CDP No. 1-07-041 Humboldt County Public Works Department Jacoby Creek bridge sediment management, etc.) in order to reduce both Commission and District staff workload associated with processing repetitive, routine coastal permits. However, given the fact that circumstances can change over time and techniques for addressing vegetation management needs can also evolve, the Commission chooses to grant an initial five year period of development authorization with a one-time ability to extend the period of development authorization for another five years for a maximum total of 10 years of development authorization, if there are no changed circumstances that require review of the vegetation management operations to ensure the development remains consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission attaches Special Condition No. 3, which limits the authorized development to five years, but grants the Executive Director the authority to approve a request for an additional five years of vegetation management operations provided that the request would not substantively alter the project description and/or potentially require modifications of the conditions due to new information or technology or other changed circumstances.

F. Alleged Violation

Although certain development has taken place at the project site without the benefit of a coastal development permit, including clearing approximately 3.7 acres of vegetation (primarily blackberry, poison oak, and Pampas grass) within Segment 3 and 0.07-acre of vegetation (primarily blackberry and poison oak) in Segment 1 in 2007, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

G. California Environmental Quality Act

Section 13906 of the Commission's administrative regulation requires Coastal Commission approval of coastal development permit applications to be supported by a finding showing the

application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed project has been conditioned to be consistent with the policies of the Coastal Act. The findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As specifically discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

V. EXHIBITS:

1. Regional Location
2. Project Vicinity
3. Coastal Development Permit Jurisdictions
4. Project Area Detail
5. Photo of Segment 1 riparian habitat (with old nest)

Click on the link at left
to go
to the exhibits.

APPENDIX A

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.
3. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
4. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.