

CALIFORNIA COASTAL COMMISSION

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Hearing Opened: October 11, 2000
Staff: Susan Sniado
Staff Report: November 3, 2000
Hearing Date: November 17, 2000
Commission Action:

STAFF REPORT:**APPEAL - SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with conditions
APPEAL NO.:	A-1-MEN-00-043
APPLICANTS:	WILLIAMS COMMUNICATION INC.
APPELLANT:	Coastal Residents Coalition
PROJECT DESCRIPTION:	Install the coastal zone portions of two fiber optic cables and associated facilities extending from the Manchester Radio Facility near Point Arena to the central valley communities of Robbins and Sacramento.
PROJECT LOCATION:	There are two main routes and one contingency route within the coastal zone of Mendocino County, all beginning at the Manchester Radio Facility, in Manchester. The route to Robbins goes east along Kinney Road, south on Highway 1, east on Mountain View Road to the coastal zone boundary. The route to Sacramento goes east along Kinney Road, south on Highway 1, east on Riverside Drive and Eureka Hill Road, south on Ten Mile Road, Ten

Mile Cut-off Road, and Iversen Road, then East on Fish Rock where it leaves the coastal zone. The contingency route heads west from Highway 1 on Biaggi road, ties in with a recently approved AT&T fiber optic cable route, and then heads south to Highway 1 at Mountain View Road.

SUBSTANTIVE FILE
DOCUMENTS:

Mendocino County CDU 5-2000
Mendocino County Local Coastal Program.

SUMMARY OF STAFF RECOMMENDATION:

SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The County of Mendocino approved with conditions a coastal development use permit for the installation of fiber optic cables and associated facilities within the coastal zone portions of two routes that extend from the Manchester Radio Facility near Point Arena to the central valley communities of Robbins and Sacramento. The appellant contends that the project as approved is not consistent with the criteria and policies of the County's LCP concerning avoiding adverse cumulative impacts, concentrating development, and maintaining and enhancing public access. The appellant also contends that the project as approved did not conduct the appropriate analysis under the guidelines of the California Environmental Quality Act (CEQA).

Commission staff analysis indicates that the appellant raises substantial issues of conformance of the project as approved by the County with the criteria and policies of the County's certified LCP regarding avoiding adverse cumulative impacts and concentrating development. The County's analysis did not include a comprehensive evaluation of the incremental effects of past, current or future fiber optic projects in relationship with this project. Additionally, as approved, certain surveys and mitigation development for sensitive resources and erosion control were not performed prior to the County's action on the permit. Instead, the County conditioned the permit to require that these surveys be performed prior to construction. It is unclear how future information obtained after project approval could be analyzed in relationship to other projects or the incremental effects of this project. The concerns raised by the appellant that there would be cumulative adverse effects from soil erosion/sedimentation and potential bentonite spills

on coastal streams and cumulative adverse effects from project construction on wetlands, sensitive biological resources, and archaeological resources do raise a substantial issue of conformance to the requirements of Land Use Plan (LUP) Policy 3.9-1 that all development proposals shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

The County's review of the project did not analyze alternatives for consolidating fiber optic cable installation with other project cable projects. Sharing the cable route with another company and consolidating the work could decrease the incremental adverse cumulative effects of the project. Therefore, staff recommends that the Commission find that the project as approved by the County raises a substantial issue of conformance with other requirements of LUP Policy 3.9-1 that new development be in close proximity to existing areas able to accommodate it.

Commission staff analysis indicates the appellant does not raise a substantial issue of the project's conformance with the public access policies of the LCP and the Coastal Act. Only a small portion of the project is located between the first public road and the sea. In addition, the section of the project that lies between the first public road and the sea may experience temporary traffic delays while cable is installed, but the project includes no significant permanent above ground facilities that would affect coastal access after completion of the project.

Furthermore, staff has determined that the conditions concerning compliance with CEQA are not valid grounds for appeal in that these contentions do not raise issues of conformance with the certified LCP or the public access policies of the Coastal Act.

Staff recommends that the Commission continue the de novo portion of the appeal hearing to a subsequent meeting because the Commission does not have sufficient information to determine if the project can be found consistent with the policies of the certified LCP. As discussed in Finding E beginning on Page 28, the needed information includes: (a) clarification of the project description, (b) a description of proposed site specific erosion control methods, (c) complete wetland surveys based on LUP wetland definitions, (d) a botanical survey of rare plants, (e) a survey of the endangered Point Arena Mountain Beaver for the proposed cable routes within the range of the species, (f) verification that all necessary archaeological surveys of the project area have been performed, (g) geotechnical investigations of directional boring sites to evaluate concerns over potential spills of bentonite drilling slurries, and (h) an analysis of the feasibility of installing the cables in conjunction with other proposed fiber optic cable projects.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on Page 6.

STAFF NOTES:

1. Appeal Process.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603.)

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within one hundred feet of a wetland or stream or three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments that constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission because the proposed development: (1) is not a principally permitted use; (2) is located between the sea and the first public road paralleling the sea; (3) is within one hundred feet of wetlands and streams; and (4) constitutes a major public works facility.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

The only persons qualified to testify before the Commission on the substantial issue question are the applicants, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

2. Filing of Appeal.

The appellant filed an appeal (Exhibit No.6) to the Commission in a timely manner on September 15, 2000 within ten working days of the County's issuance of the Notice of Final Action, which was received in the Commission's offices on September 13, 2000.

3. Continuation of Hearing.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. The appeal on the above-described decision was filed on September, 15, 2000. The 49th day occurred on November, 2, 2000 and the only meeting entirely within the 49-day period would have been October, 10-13, 2000. In accordance with the California Code of Regulations, on September 19, 2000, staff requested all relevant documents and materials regarding the subject permit from the County, to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The County permit file information had not been received as of the day of the mailing of staff reports to the Commission and interested parties on items on the Commission's October meeting agenda. Thus, the requested information was not received in time for the staff to review the information for completeness or prepare a recommendation on the substantial issue question. Consistent with Section 12112 of the California Code of Regulations, since the Commission did not timely receive the requested documents and materials, staff requested that the Commission open and continue the hearing open until all relevant materials are received from the local government. On October, 11, 2000, the Commission voted to open and continue the public hearing to determine whether substantial issue exists with respect to the grounds on which the appeal has been filed.

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE.

The staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeal has been filed, pursuant to Public Resources Code Section 30603.

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-00-043 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-00-043 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares:

A. Appellant's Contentions.

The Commission received an appeal from the Coastal Residents Coalition. The appeal includes three letters referenced and attached to the appeal application. The letters submitted with the appeal include a letter from the Coastal Resident's Coalition (the appellant), the Attorney General's office, and attorney Herman Fitzgerald (Exhibit No. 6).

After the appeal period ended, the Commission received a letter from the Coastal Residents Coalition written by Alan Levine of the Coastal Action Group. Because the Levine letter came in after the close of the appeal period, only those comments in the letter that supplement or clarify issues brought up in the appeal documents filed prior to the close of the appeal period can be valid grounds for appeal. Issues raised in his letter that are not addressed in the previously submitted appeal documents and therefore are not valid grounds for appeal include: 1) Williams' failure to employ required mitigations in

the non-coastal zone portion of the project 2) Williams' failure to follow the project design in the non-coastal zone portion of the project, 3) the appropriateness of extending the winter operating period, 4) Lack of compliance with Clean Water Act responsibilities to obtain additional storm water and waste discharge permits 5) the effectiveness of monitoring procedures, and 6) the appropriateness of drilling or trenching of perennial streams before July 15.

The appellant contends that the project is not consistent with the criteria of the LCP regarding avoidance of adverse cumulative impacts, concentrating new development, and maintenance and enhancement of public access to the coast. The appellant further contends that the project is not consistent with the policies of the LCP concerning the adequacy of the CEQA documentation. The appellant's contentions are summarized below, and the full text of the contentions is also included as Exhibit No. 6.

1. Avoidance Of Adverse Cumulative Impacts On Coastal Resources

As approved, the appellant contends that the project is inconsistent with the provisions of LUP policy 3.9-1 that require avoidance of adverse cumulative impacts on coastal resources. In applicable part LUP Section 3.9-1 in applicable part states:

All development proposals shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

The appellant indicates that Williams and the County failed to adequately acknowledge possible adverse cumulative impacts and that they failed to assess the project's incremental effects in connection with the effects of past projects, the effects of other current projects and the effects of probable future projects. The appellant also contends that there are potentially enormous congestion and erosion problems associated with the project and that it is ineffective and insufficient to analyze the project in isolation from the impacts of other similar projects.

The appellant refers to the two letters attached to the appeal from the Attorney General's office and attorney Herman Fitzgerald as supporting documentation that the County failed to assess the project's incremental effects in connection with the effects of other past, present, and future projects as required by LUP Policy 3.9-1. Each letter lists various kinds of information or analysis that the appellants believe would be important for an evaluation of the cumulative adverse impacts of the project on coastal resources and allegedly were inadequately addressed or performed in the County's review of the project, and therefore raise concerns that the development has not been regulated to prevent significant adverse cumulative impacts, inconsistent with the LCP Policy 3.9-1. The points of information or analysis listed in the letters as follows:

a. Cumulative impacts-failure to properly analyze

The County's review of the project fails to acknowledge any other cable installation or other utility projects proposed or underway along the project's proposed route and does not assess the incremental effects of the project in connection with the effects of past projects, other current projects, and probable future projects.

b. Erosion/soil stability- incomplete analysis

The project as approved requires that certain geotechnical investigations be performed prior to the commencement of construction and based on these investigations, suitable mitigation measures be developed and implemented. Delaying investigation of these geotechnical concerns to a point after permit approval does not ensure that significant adverse effects will be avoided.

c. Improper deferral of resource analysis and mitigation

The County's review of the project defers analysis and development of specific mitigation measures to a later date. For example biological, cultural and wetland delineation reports have not been completed. Mitigation measures that are dependent on future studies do not guarantee adequate inquiry into a project's environmental effects.

d. Wetlands- failure to identify method of construction

The project as approved by the County, fails to identify the method of construction that will be used and lacks analysis to show that significant impacts to wetlands will be avoided.

e. Wetlands-risk of bentonite release

The project as approved by the County contains no site-specific measures to mitigate or contain the damage should a release of bentonite occur.

f. Cultural Resources-incomplete surveys and mitigation un- or underdeveloped

Cultural surveys have not been completed for the project and those that are complete lack information such as the extent of the resource. In order for the impacts to be considered less than significant, effective mitigations should already be developed and not deferred to a later date.

g. Failure to identify method of construction

Failure to identify which construction method (trench, plow, overhang or utilize existing conduit) will be used for each segment of the proposed routes undermines the conclusion that the project as approved will avoid significant impacts.

The letter sent by the Coastal Residents Coalition to the Coastal Commission, submitted by the appellants as a supplement to their appeal after the appeal period ended, also raises

points relevant to the appellants contention concerning cumulative impacts. The following relevant points are excerpted from the letter:

h. Effects of soil erosion on water quality and endangered fish

The letter makes several statements regarding the cumulative effects of soil erosion. It states that there are unstable soils and geology, degraded water quality, and listed fish species at risk, and that the proposed activity poses a further risk to these resources. It notes that the environmental document discloses that there will be cumulative temporary water quality impacts from erosion and discharges. There is an absence of discussion on the Garcia River Total Maximum Daily Load (TMDL) for sediment and how the proposed activities with mitigations propose to correct erosion sources that might be aggravated on the cable right-of-way. The letter also notes that estimates of runoff coefficients and run-on calculations are soil, vegetative, and slope dependent. Sufficient information on soils and site-specific conditions is not available in the document to make accurate calculations. The letter notes that timber production continues to contribute to impacts in this area and suggests that historic impacts from past projects including current AT&T projects and past bentonite spills must be analyzed in the context of current and future management projects to ensure no significant adverse impacts will result from the project.

i. Wetlands

The letter states that trenching of Class III streams could have consequences to sensitive drainages and requires more substantial analysis to assure significant adverse impacts to such streams are avoided.

2. Concentrating Development

The appellant's second major contention is that Williams' development is not concentrated with other existing or planned fiber optic company projects and therefore raises a substantial issue of conformance with the provisions of LUP Policy 3.9-1 that require "*that new development be in or in close proximity to existing areas able to accommodate it.*"

3. Maintaining and enhancing public access to the coast

The appellant's third major contention is that both of the proposed cable routes follow roads that provide public access to the coast and these roads are being severely damaged by trenching. The appellant contends that patching the roads as proposed upon project completion make travelling difficult and vulnerable to early deterioration. They state that Williams should be required to resurface the entire length of both roads. They cite traffic delays associated with the project. A newspaper article from the Mendocino Coast Observer Newspaper on 9/1/00 was submitted with the appeal. The article states that

within the non-coastal zone portion of the Williams project where work has already begun, a filled trench was subjected to half an inch of rain, the road became mudslick and was impassable for a day and a half. The appellant believes such inconveniences to the public raise a substantial issue of conformance with the LCP public access provisions and the public access policies of the Coastal Act.

4. California Environmental Quality Act documentation inadequate

The appellant contends that an Environmental Impact Report (EIR) must be prepared because the project may have a significant environmental impacts. The letters that the appellant submitted with the appeal from the Attorney General's office and Herman Fitzgerald state that the coastal development permit violates the California Environmental Quality Act (CEQA) because an EIR, not a Mitigated Negative Declaration (MND), is required. The letters contend that the impact analysis that an EIR would disclose including the effectiveness of the proposed mitigation measures and alternatives is entirely absent. One of the letters also states that as the final alignment of the cable route has not been chosen, there has been no finite project description for review by the public.

The letters also state that a MND can be adopted only if all potentially significant impacts will be avoided or reduced to insignificance. In order for this to occur, project plans must be specific and incorporate specific and definite mitigation measures. The letters conclude that the MND is deficient as a fully informative environmental document under CEQA asserting that the proposed mitigation measures are not site-specific, defer to the conclusions of future studies, or are inadequate to support a conclusion that effects will be less than significant.

The appellant also contends that the Williams MND is so technical that the average reader could not verify the document's accuracy.

B. Local Government Action.

On July 20, 2000 the Mendocino County Planning Commission approved the project with conditions. The project was appealed to the Board of Supervisors, who upheld the action of the Planning Commission. The County then issued a Notice of Final Action on the permit, which was received by Commission staff on September 13, 2000 (Exhibit No. 5).

The County attached to its coastal permit a number of special conditions (Exhibit No. 5). Special Condition No. 4 states that trenching or plowing through riparian areas shall not be permitted within the coastal zone. The preferred method of crossing all streams and riparian areas shall be attachment to bridges, followed by trenching within a roadway over or under existing culverts, and lastly by directional boring. Special Condition No. 5 states that trenching or plowing through wetlands shall not be permitted within the

coastal zone unless there is no other feasible, less environmentally damaging alternative. Prior to initiating any construction activity within any wetland within the coastal zone, the applicant shall submit to the Department of Planning and Building Services a plot plan and written description describing the work proposed, the mitigation measures to be implemented, and information supporting the determination that no other less environmentally damaging alternative is feasible. Special Condition No. 3 states that areas of disturbed soil shall be reseeded and covered with native vegetation as soon as possible after disturbance. No less than 100 percent coverage must be achieved within 90 days after seeding. Special Condition No 2 states that mitigation measures proposed in the Mitigated Negative Declaration (MND) for the protection of biological resources shall apply to all areas that fall within the definition of an Environmentally Sensitive Habitat Area (ESHA) as defined in Coastal Zoning Code Section 20.308.040 (F). Some of the pertinent mitigation measures incorporated in the MND include: (a) establishment of a minimum 20-foot exclusion zone around all threatened, endangered, candidate, and other special status plant species; (b) surveying proposed staging areas before construction and if suitable habitat is found choosing a new site or avoiding with mitigations where feasible; (c) to protect California Native Plant Society (CNPS) special status species from List 2 and 4, limit ground disturbance and other activities to the smallest possible corridors; (d) minimizing disturbance and restoring jurisdictional wetlands to preproject conditions; (e) minimizing disturbance and restoring other waters of the United States to preproject conditions; (f) avoiding disturbance to nesting swallows by implementing timing restrictions, removing nests, and installing mesh netting; and (g) avoiding bat maternity roosts by postponing bridge attachments.

C. Project and Site Description.

Williams Communications, Inc. proposes to install buried conduits, fiber optic cables and related facilities along two routes through Mendocino County. Both routes begin at the AT&T telecommunications facility at Manchester, north of Point Arena, and terminate in communities in the California central valley. Within the inland portions of Mendocino County the installations are permitted uses and installation has begun.

There are two main routes proposed. The Point Arena to Robbins route is proposed to run east along the north side on Kinney Road, then south along the east side of Highway 1, then east along the north side of Mountain View Road, until it leaves the coastal zone. After leaving the coastal zone, the route continues through Boonville, Ukiah, and Calpella to a PG&E electrical substation in Redwood Valley, where it connects with overhead cable to a location near Williams in the central valley, where it then continues to Robbins.

The Point Arena to Sacramento route is proposed to run east along the south side of Kinney Road, then south along the west side of Highway 1, to the City of Point Arena.

In Point Arena the route leaves Highway 1 proceeding east along the south side of Riverside Drive, which becomes Eureka Hill Road outside of the City limits. The portion of the route located within the City of Point Arena was approved by a city-granted Coastal Development Permit and was not appealed to the Commission. From Point Arena, the route continues along the south side of Eureka Hill Road, then along the west sides of Ten Mile Road and Ten Mile Cutoff Road, then along the east side of Iversen Road to Fish Rock Road, where it continues east, leaving the coastal zone, to continue on to Yorkville, Cloverdale, Santa Rosa, Napa, Fairfield and Sacramento.

Each of the cable routes would connect with the Williams telecommunications facility west of Highway 1, at the end of Kinney Road, in Manchester. The facility, where switching and signal regeneration would occur, was recently approved under a separate Coastal Development Permit by Mendocino County.

Additionally, Williams is seeking approval of an alternate (contingency) route for a portion of the Point Arena to Sacramento route. The alternate route would only be used if the California Department of Transportation does not grant Williams an easement on opposite side of Highway 1 from the AT&T cable route. The alternate route would leave the Manchester facility and proceed along Highway 1 to Biaggi Road, then go west along a previously approved AT&T route, then south back to Highway 1 at Mountain View Road, where it would rejoin the applicant's preferred route.

The fiber optic cable system would consist of below and above ground components. The below ground components consist of the fiber optic cable and conduits, utility access vaults, and handholes/manholes. Above ground components consist of cable marker posts and utility buildings to house optical amplification and regeneration equipment. Three or more conduits are to be installed, one for Williams currently-proposed fiber optic cable, and the others for future use by Williams or other carriers. Utility vaults and handholes/manholes are placed at 3 to 5 mile intervals, with only the lid visible at the ground surface. Cable marker posts consist of 3.5-inch diameter round PVC posts with orange caps 4 feet above ground. The caps are imprinted with embossed lettering indicating the presence of fiber optic cable. Optical amplification (OP-AMP) regenerator stations are placed at 30-40 mile intervals, none of which are proposed to be located in the coastal zone.

Plowing, trenching, and directional boring would be used to install the conduits along the routes. Plowing is accomplished by use of a crawler tractor pulling a large plow through which the conduit is fed into the bottom of the furrow cut by the plow as the tractor moves along. Trenching is accomplished by a rubber-tired backhoe or trencher that digs a trench 1-foot wide by 4 feet deep in which the conduit is then buried. Directional boring consists of drilling more-or-less horizontally underneath streams, sensitive habitat areas, highways, railroads, or other locations where surface disturbance must be avoided.

The project as approved by the County does not specify all of the locations where directional boring, plowing, or trenching would be used. Some streams and wetlands within the coastal zone may not be avoided by directional boring.

Staging areas for construction equipment, materials, fuels, lubricants, and solvents would be established along the project routes during construction. However, where such staging areas would be located had not yet been determined at the time of the County's action on the permit. Instead, the locations of staging and parking areas would be determined by the applicant in consultation with qualified biologists and archeologists. Because fuels, lubricants, and solvents would be stored in staging areas, all staging areas would be located at least 150 feet from sensitive drainages.

Access to project routes would be by existing access roads to the road or railroad right-of-way. No new access roads would be created for fiber optic cable installation; however, some, existing roads in isolated areas may require minimal repairs to make them usable for construction. The locations where such improvements are needed have not been specified. After completion of fiber optic cable installation, access roads would be repaired, if necessary, to prevent future erosion.

After installation, access to the project routes for maintenance would also be by existing access roads to the road rights-of-way. Activities following installation would consist mainly of implementing erosion control measures or repairing or replacing cable conduit because of storm damage, landslides, or other emergencies. Specific access roads would not be selected until the early stages of construction planning. Selection of access roads would be determined after consultation with qualified biologists.

A portion of the proposed development has begun without the benefit of a coastal development permit. The applicant has already installed fiber optic cable along an approximately 800-foot section of the Mountain View Road within the coastal zone.

D. Substantial Issue Analysis.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Three of the contentions raised in the appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP or with public access policies of the Coastal Act. These contentions allege that the approval of

the project by the County raises significant issues related to LCP provisions regarding (1) adverse cumulative impacts (2) concentrating development and (3) maintenance and enhancement of public access. The Commission finds that two of the three contentions raise a substantial issue, for the reasons discussed below.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term substantial issue is not defined in the Coastal Act or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (California Code of Regulations, Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to California Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to certain allegations (a and b below) a substantial issue exists with regard to the approved project's conformance with the certified Mendocino County LCP. As further discussed below, the Commission finds that with respect to the allegations regarding public access issues (c, below), the

development as approved by the County raises no substantial issue with the certified LCP or the access provisions of the Coastal Act.

Allegations Raising a Substantial Issue

The appellant contends that the project as approved by the County is inconsistent with LCP policies regarding planning and locating new development. The LCP inconsistencies are categorized as avoidance of adverse cumulative impacts and concentrating new development.

a. Avoidance Of Adverse Cumulative Impacts On Coastal Resources

As approved, the appellant contends that the project is inconsistent with LUP policy 3.9-1 that requires avoidance of adverse cumulative impacts on coastal resources.

The appellant contends that the project as approved by the County does not take into account possible adverse cumulative impacts and that they fail to assess the project's incremental effects in connection with the effects of past projects, the effects of other current projects and the effects of probable future projects have not been assessed. The appellant also contends that the project would create traffic congestion and that there are potentially enormous erosion problems associated with the project.

The appellant refers to two letters attached to their appeal as supporting documentation that the County fails to assess possible adverse cumulative impacts on coastal resources as required by LUP Policy 3.9-1. These letters include a letter from the State of California Attorney General's office and private attorney Herman Fitzgerald. The letters were written as comments on the Initial Study and Draft Mitigated Negative Declaration for the Williams project, which was prior to action on the coastal development permit by the County. The appellant includes the letters to raise specific concerns that substantiate their claim. Each letter lists various kinds of information or analysis that the appellant believes would be important for an evaluation of the cumulative adverse impacts of the project on coastal resources, and allegedly are inadequately addressed or performed in the County's review of the project and therefore raise concerns that the development has not been regulated to prevent significant adverse cumulative impacts, inconsistent with the LUP Policy 3.9-1.

The Attorney General's letter raises the following specific concerns relevant to the cumulative impacts contention: (a) improper deferral of analysis and development of mitigation measures for a variety of sensitive resources including biological, cultural, and wetland resources, (b) lack of site specific measures to mitigate or contain benonite, (c) failure to analyze the impacts of past, current and future projects along the project route, and (d) failure to identify the method of construction for each segment of road.

The letter from attorney Herman Fitzgerald, in applicable part, addresses the issue that the project lacks a detailed project description with a definitive route alignment, and therefore the cumulative impacts of the project have neither been fully assessed nor avoided.

The appellant also submitted a letter sent by the Coastal Residents Coalition as a supplement to their appeal after the appeal period ended. The letter raises points relevant to the appellant's contention concerning the failure of the project as approved to address the cumulative effects of soil erosion on water quality, endangered fish, and wetland habitats.

LCP Policies

In applicable part LUP Section 3.9-1 states:

All development proposals shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

The definition of cumulative impacts is defined in the County Coastal Zoning Code Sec. 20.308.030 (C) (Q).

"Cumulative Impacts" refers to two (2) or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

(1) The individual effects may be changes resulting from a single project or a number of separate projects.

(2) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonable foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

Discussion

The appellant contends that the County's review of the coastal development permit application and its subsequent action on the permit environmental analysis did not adequately address adverse cumulative impacts from the project. The project is complex involving trenching, plowing, or boring within an area approximately 20-40 feet wide

through 15 miles of the coastal zone. There were two Mitigated Negative Declaration documents produced for the project containing over approximately 2000 pages in seven volumes. However, it should be noted that much of the of the written material in the second document duplicates the information that is contained in the first document. The County's staff report states that the County relied upon these documents for the environmental analysis, including the description of design features and mitigation measures that would reduce potential project impacts to a level of insignificance. The following is a list of the environmental documents the County cited as containing the project information: Initial Study/Draft Mitigated Negative Declaration, Volumes I and II dated August 1999; Subsequent Initial Study/Final Mitigated Negative Declaration Volume III dated September 1999; Subsequent Initial Study/Draft Mitigated Negative Declaration Volumes I, IIa, and IIb; and Subsequent Initial Study/Final Mitigated Negative Declaration Volume III, dated April 2000. The County conditioned the project to require that all of the mitigation measures specified in the Negative Declarations be implemented.

INCREMENTAL EFFECTS OF PAST PROJECTS

The appellant contends that the County's review did not analyze the effects of other past, current or probable future projects that may, when added to the effect of this project, produce incremental effects which may lead to possible adverse impacts. In the letter submitted with the appeal from the Attorney General's office the appellant contends that if multiple companies successively trench along the same routes to lay their cable, the potential for cumulative erosion may be great. In the supporting letter written by Mr. Levine, it is stated that cumulative effects analysis must consider historic and ongoing impacts to affected watersheds, including the current AT&T project and past spills. The appellant also contends that there are potential traffic congestion problems associated with this project and cumulatively with other projects.

The County's staff report lists ten fiber optic related use permits issued by Mendocino County since 1987. The list also identifies a foreseeable future project that the Sprint Corporation is planning. The County states that Sprint has applied for a permit to install fiber optic cable in conjunction with the Williams cable project. Although the County staff report lists these projects, the report does not provide any analysis on the possible incremental effects of these projects. The only analysis of cumulative impacts of the project is found in the MND. The analysis of past projects within the MND is also lacking any analysis of the incremental effects of these projects on coastal resources. The MND cumulative impacts analysis lists 3 fiber optic projects (AT&T Dunnigan-Manchester, AT&T Japan-US, and 1989 AT&T fiber optic installation) and timber operations in western Mendocino county as projects most relevant to potential cumulative impacts. However, the MND makes no mention of the future Sprint project.

The County's analysis did not include comprehensive evaluation of the incremental effects of these projects in relationship with the Williams project. The lack of such an evaluation is best exemplified in the MND's discussion of hydrologic and water quality cumulative impacts. The MND states that cumulative temporary impacts from erosion and discharges of contaminated storm water could occur because of other similar ground disturbing activities taking place. It concludes that large-scale projects are individually responsible for implementation of appropriate erosion measures applicable to their permitting process and concludes that the small increases in sediment from the applicant's project would be minimal to the overall amount occurring from other projects. However, the LCP defines cumulative impacts as "*individually minor but collectively significant projects taking place over a period of time.*" In this context a substantial issue is raised as to whether the County's analysis of the past projects in relationship to the incremental effects of the Williams project is sufficient to assure that adverse cumulative impacts on coastal resources will not occur, consistent with LUP Policy 3.9-1.

TRAFFIC CONGESTION

The appellant contends that there would be cumulative traffic congestion effects resulting from project construction. However, these effects would be of short duration. The Commission finds that the contention does not raise a substantial issue of conformance with LUP Policy 3.9-1 because although the project may create temporary traffic delays while the cable is being installed the project is not expected to have long term adverse effects on traffic flow and public access.

EROSION AND SOIL STABILITY

The appellant contends there is potential for enormous erosion problems as a result of the project. The Attorney General's letter supports this premise by citing the MND section which discloses that the project could create conditions of soil instability and long term slope failures. The MND concludes that the impacts will be less than significant because subsequent geotechnical analysis will be conducted for wherever the project must pass through a potentially unstable area, and that the cable may be rerouted, bored or trenched beneath the failure plane of the unstable area. Although these subsequent studies are prepared by the applicant, the County's special conditions of approval do not include specific requirements that these studies actually be performed. The Attorney General's letter states that promises to adhere to measures that may be recommended in a future study cannot form the basis for concluding that a potential significant impacts will be less than significant.

Mr Levine's letter, submitted by the appellant, also addresses the issue of soil erosion. He states that the environmental document discloses that there will be cumulative temporary water quality impacts from erosion and discharges. He contends that there is

an absence of analysis on the Garcia River Total Maximum Daily Load (TMDL) and how proposed activities may affect erosion sources within the watershed.

The County's review of erosion and runoff issues relied on the analysis in the MND. The County did identify erosion and sedimentation as possible impacts resulting from the project. The staff report states that potential impacts are anticipated to be mitigated to less than significant by mitigation measures contained in the MND's Storm Water Prevention Plan (SWPPP). However, the SWPPP leaves much of the site specific investigations, analysis and mitigation to a future date. The SWPPP states that it is difficult to predict specific erosion and sediment control measures that will be required at any given location and that areas of existing and potential instability would be avoided to the extent practicable (emphasis added). It is not clear how "avoidance to the extent practicable" would be determined. The conditions of general approval do not require that specific erosion and sediment control measures be reviewed by the County. The MND states that the general procedures for controlling erosion and sedimentation from project related soil disturbances such as an onsite assessment by qualified construction contractors of existing conditions (slope, vegetation cover, soil type, existing erosion problems) are sufficient to prevent sediment releases from the project site. As decisions as to when and where specific erosion and sediment control measures would be used would be left to the contractor, the project as approved raises a substantial issue as to whether the development would be sufficiently regulated to prevent cumulative impacts from soil erosion and soil instability.

Mr. Levine raises a question regarding the absence of a TMDL study for the Garcia River. The Garcia River is considered sediment and temperature impaired by the United States Environmental Protection Agency (EPA). The EPA has approved TMDL standards which would limit the amount of non-point source sedimentation into the Garcia River. However, a TMDL analysis is not specifically required under the LCP. The LCP does mandate that all development proposals be regulated to prevent any adverse cumulative impacts to coastal resources, such as sedimentation of important fish bearing streams such as the Garcia River. Therefore, although a TMDL study is not required, the lack of review of site-specific locations where steep and unstable soil types exist and site specific sediment control mitigations, raises a substantial issue as to whether the development will be adequately regulated to prevent any significant adverse cumulative impacts on coastal streams and other coastal resources as required by LUP Policy 3.9-1.

IMPROPER DEFERRAL OF RESOURCE ANALYSIS AND MITIGATION

The contention is raised that the County's review of the project defers analysis and development of specific mitigation measures to a later date and that mitigation measures dependent on future studies do not guarantee adequate inquiry into a project's

environmental effects. For example biological, cultural and wetland delineation reports have not been completed.

Wetlands

The contention is raised that the project as approved by the County failed to identify which method of installation will be used within all wetlands and lacks the analysis to show that all wetlands will be avoided. Mr. Levine's letter notes that trenching of Class III streams could have consequences and should require more substantial analysis.

According to the County's staff report, the MND lists one wetland along the Point Arena to Robbins route and 10 wetlands along the Point arena to Sacramento route, with one additional wetland (Lagoon Creek) along the contingency route. The County stated that it was not clear whether all the wetlands in the coastal zone were identified and mitigated. Therefore, the County added a condition that stated trenching or plowing through wetlands would not be permitted within the coastal zone unless there were no other feasible, less environmentally damaging alternatives. The County also conditioned the project to require that prior to any construction activity within any wetland, the applicant must submit to the Department of Planning and Building Services a plot plan and written description describing the work proposed, the mitigation measure to be implemented, and information supporting the determination that no other less environmentally damaging alternative is feasible. The deferral of wetlands identification, method of construction, and feasibility of avoiding the wetlands did not allow the cumulative effects analysis to be considered at the time of permit approval. Therefore, a substantial issue is raised as to whether the development would be sufficiently regulated to prevent adverse cumulative effects on wetlands consistent with LUP Policy 3.9-1.

The Coastal Commission notes that the definition proposed to be used to identify wetlands within the coastal zone is a much narrower definition than is the definition found in the certified LCP and the Coastal Act. Therefore, many wetlands would not be identified or afforded protection measures. The MND proposes to use the Army Corp of Engineer's definition to delineate wetlands. The Army Corp defines a wetland as containing all three of the following factors: hydrophytic vegetation, hydric soils, and wetland hydrology. The County LCP requires that only one of these conditions needs to be present to qualify as a wetland. Therefore, it is probable that many wetland habitats within the coastal zone would not be mapped and considered for protection measures according to the policies of the LCP. As approved by the County, this project may contribute to adverse cumulative impacts on wetland habitats.

Additionally, the County analysis of the project did not require maps of the riparian areas and buffer zones as stipulated in Coastal Zoning Code Section 20.532.060. The County staff report states that there maybe small drainages with associated riparian areas that will

be crossed by the cable route, but which have not been specifically identified. The County conditions require that a 50 to 100-foot buffer be established around all riparian areas. Mendocino Zoning Code requires a minimum 100-foot buffer from the outer extent of riparian habitat, unless consultation with the Coastal Commission and Fish and Game occurs on a site-specific basis. However, as the habitat extent and quality is unknown, it is unclear whether the buffers to be applied will be adequate to protect sensitive resources. Therefore, a substantial issue is raised as to whether the development would be sufficiently regulated to prevent adverse effects on wetlands and associated riparian habitat.

Biological Resources

A contention is raised that biological delineation reports have not been completed for biological resources and that measures dependent on future studies do not guarantee adequate inquiry into a project's environmental effects.

The County's analysis noted that the MND contained numerous measures for the protection of sensitive resources. The County acknowledged that within the coastal zone, the definition of "Environmentally Sensitive Habitat" is broader than the term "sensitive resources," which is used in the MND. The County therefore conditioned the project to apply the mitigations in the MND employed for "sensitive resources" to all Environmentally Sensitive Habitat Areas as defined in the County Coastal Zoning Code. However, the mitigations specified in the MND for sensitive resources call for a 20-foot exclusion zone around sensitive resources such as rare plants. The County Coastal Zoning Code requires a minimum 100-foot buffer around all Environmentally Sensitive Habitat, including threatened, endangered, or rare species. The County did not require a copy of all survey reports. Thus, it is unclear whether all the botanical surveys or other sensitive species have been completed to protocol. It is clear, however, that the mitigation measure to require a 20-foot buffer around rare plants is not consistent with the 100-foot buffer requirements of the certified LCP. As it is uncertain whether all of the sensitive plant resources have been adequately mapped and as smaller buffers than those required by the LCP would be employed, a substantial issue is raised as to whether the development would be sufficiently regulated to prevent significant adverse cumulative effects on rare plants consistent with LUP Policy 3.9-1.

The project occurs within the range of the Point Arena Mountain Beaver (*Aplodontia rufa nigra*), a federally listed endangered species. The two routes and the contingency route are partially within the range of the species. The County staff report did not address this species specifically and it is not clear if surveys have been conducted along both routes and the contingency route. The County's conditions of approval do not specifically require that surveys for the Point Arena Mountain Beaver be conducted prior to project construction. Therefore, because of a lack of information, a substantial issue is raised as

to whether the development would be regulated to prevent significant adverse effects on the Point Arena Mountain Beaver consistent with LUP Policy 3.9-1.

Cultural Resources

The contention is raised that cultural surveys have not been completed for the project and those that are complete lack information such as the extent of the resource.

The County staff reports states that record searches were obtained from the Northwest Information Center at Sonoma State University and other source and that there were no recorded sites with 1/8th of a mile of the project within the coastal zone. The County staff report states that field surveys were conducted as part of the MND. In the cultural resources inventory report produced by Jones and Stokes for Williams, as a supplement to the MND, it is stated that the field survey method consisted of at least a pedestrian survey of the maximum extent of the right-of-way (approximately 20 meters wide) for the length of the project at least within the coastal zone. However, the report states that as of June 2000, field survey searches were still ongoing. Thus, although the cultural resources report was prepared prior to the County's action on the permit it is not clear that all cultural resource surveys had been completed and thus identified for protection prior to the County's action on the permit. Therefore, a substantial issue is raised as to whether the development would be regulated to prevent significant adverse effects on cultural resources, consistent with LUP Policy 3.9-1.

Bentonite use and spill prevention

The contention is raised that the project as approved by the County does not contain site specific measures to mitigate or contain the damage should a release of bentonite occur.

The Storm Water Pollution Prevention Plan (SWPPP) states that since drilling slurry is not classified as hazardous and spill notification procedures do not apply. However, bentonite has the potential to act as a toxic agent and cause adverse damage to the environment. If spills are not reported to regulatory agencies and several contractors are drilling within the same watershed, bentonite spills could have a cumulative adverse impact on coastal resources.

The County's analysis of the possible adverse effects from bentonite use was relegated to the mitigation measures specified in the SWPPP, for the prevention and cleanup of spills. The SWPPP allows several mechanisms that release bentonite into the environment. The SWPPP assumes that every directional bore has the ability to escape through a fracture in the substrate (also known as "fracout"). The SWPPP states that any drilling fluids that surface will be contained and collected, but does not clarify what will happen to fluids that do not surface and are carried by the stream. The SWPPP states that if inadvertent

returns of drilling fluids exceed the capacity of containment pits then the areas will be contained with straw bales and sump pumps will then be used to pump drilling fluids back to the drilling fluid maintenance system for processing. The SWPPP states that if inadvertent bentonite returns are not great enough to allow practicable collection, then the affected area will be diluted with water and allowed to dry. Additionally, disposal and staging sites for bentonite and all other materials will not be identified until prior to construction. Thus, as approved by the County, a certain amount of bentonite can be released by the project into coastal streams. The County's analysis does not discuss why such releases of bentonite would not result in adverse cumulative impacts. The County's conditions also do not require that geological investigations be done on all boring sites and that core samples be collected and analyzed by a geologist for every site where drilling will occur prior to final project approval. Therefore, a substantial issue is raised as to whether the development would be sufficiently regulated to prevent adverse effects from bentonite spills on coastal resources consistent with LUP Policy 3.9-1.

Conclusion

The Commission finds that the project as approved by the County raises a substantial issue with respect to its conformance with the LCP policy 3.9-1 regarding avoidance of adverse cumulative effects on coastal resources. As discussed above, the concern raised by the appellant that there would be cumulative traffic congestion effects does not raise a substantial issue of conformance with LUP Policy 3.9-1 because although the project may create temporary traffic delays while the cable is being installed it is not expected to have any permanent adverse effect on traffic flow and public access.

However, as also discussed above, the concerns raised by the appellant that there would be cumulative adverse effects from soil erosion/sedimentation and potential bentonite spills on coastal streams and cumulative adverse effects from project construction on wetlands, rare plants, the endangered Point Arena Mountain Beaver, and archaeological resources do raise a substantial issue of conformance to the requirements of LCP Policy 3.9-1 that all development proposals shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources. The issue of conformance with Policy 3.9-1 is heightened by several factors. The extent and scope of the development approved by the County is very large, and the significance of the coastal resources affected by the decision are great as the development covers many miles of the coastal zone and traverses numerous watersheds containing Environmentally Sensitive Habitat Areas such as wetlands and threatened, endangered, and rare biological resources. The County's analysis of the cumulative effects of this project lacks a comprehensive evaluation of the incremental effects of the past, present and future projects in relationship to the effects of this project. As approved, surveys and mitigation development for sensitive resources and erosion control could occur at a future time. It is unclear how future information would be analyzed in relationship to other projects or the

incremental effects of this project. Thus, there is not a high degree of factual support for the local government's decision that the development is consistent with the cumulative adverse impact provisions of the LUP Policy 3.9-1. The appeal contention raises issues of regional and statewide significance because numerous new fiber optic cable projects have been proposed throughout the California coastal zone in a relatively short period of time due to the rapid advance of the technology and the need to provide new communications services. Furthermore, the local government's decision would set precedence for future interpretations of its LCP as additional fiber optic cable projects can be expected in the Mendocino coastal zone, including the pending Sprint project referenced in the County's staff report.

Therefore, for all of the above reasons, the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with the provisions of the LUP Policy 3.9-1 that development shall be regulated to prevent significant adverse cumulative effects on coastal resources.

b. Concentrating new development

The appellant contends that Williams' development is not concentrated with other existing or planned fiber optic company facilities in the Manchester area.

LUP Policy 3.9-1 in applicable part states:

An intent of the Land Use Plan is to apply the requirement of Section 30250 (a) of the Coastal Act that new development be in or in close proximity to existing areas able to accommodate it, taken into consideration a variety of incomes, lifestyles, and location preferences.

Discussion:

The County's staff report lists ten coastal development permits for fiber optic cable projects within the Mendocino Coastal zone within the last 13 years. One additional project from the Sprint Corporation is currently under review by the County for fiber optic cable installation. The County report states that some of the work will be done in cooperation with other companies in Mendocino. It states that Williams will be installing conduits for much of Sprint's proposed cable route and that Williams will follow portions of AT&T's Manchester to Dunigan route. It is stated that if the use of Highway 1 is limited by California Department of Transportation to one side of the highway then Williams will use a portion of the route recently approved for AT&T. However, the County staff report did not address or require analysis of alternatives, which would require the applicant to consider consolidating fiber optic installation with additional

cable projects. Sharing the cable route with other companies and consolidating the work could decrease the incremental adverse cumulative effects of the project.

As approved, the project would not be required to be located entirely along the same routes as other fiber optic cables. The extent and scope of the development approved by the County is very large and the significance of the coastal resources affected by the decision are great as the development covers many miles of coastal zone and traverses numerous watersheds containing ESHAs such as wetlands and threatened, and endangered, and rare biological resources. In addition, the County's decision not to require the proposed fiber optic cable to be located entirely along the same route as other fiber optic cables could set a precedent for it review of the pending Sprint project and other future projects. Therefore, the Commission finds that the project as approved by the County raises a substantial issue as to whether the development will be in close proximity to existing areas able to accommodate it consistent with LCP policy 3.9-1.

Appellant's Contentions That Do Not Raise a Substantial Issue

One of the contentions raised by the appellant that is based on valid grounds for appeal does not raise a substantial issue of conformance with the certified LCP and the coastal access policies.

c. Public Access

The appellant contends that two roads along both Williams cable routes, Fish Rock and Mountain View Roads provide public access to the coast and both roads are being severely damaged by trenching making travel difficult and roads vulnerable to early deterioration. The appellant also contends that there are potentially enormous congestion problems associated with the project and that it is ineffective and insufficient to analyze the project in isolation from the impacts of other similar projects.

LCP Policies

Coastal Act Section 30210 states that:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states that:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

Discussion

Although the County staff report did not address public access as an issue, the Coastal Act requires that any project located between the first through public road and the sea must include a finding on public access. There is a portion of the route along Kinney Road that lies between the first public road the sea. However, Fish Rock and Mountain View Roads, which the appellant specifically mentions, do not lie between the first public road and the sea where this policy would apply. The section of the project along Kinney Road that lies between the first public road and the sea may experience temporary traffic delays while cable is installed, but the project is not expected to block coastal access for any substantial length of time. The Commission notes that the extent of the project between the first public road and the sea is relatively small and the project would result in no permanent impacts to public access. Thus the significance of the public access resource affected by the decision is not great. Therefore, although the issues of traffic congestion and the post-project road condition are important considerations, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance with the certified Local Coastal Program and the public access policies of the Coastal Act.

Appellant's Contentions That Are Not Valid Grounds for Appeal.

The appellant raises two kinds of contentions that are not valid grounds for appeal. As discussed below, the contentions raised in regard to the adequacy of the CEQA documentation do not present potentially valid grounds for appeal in that these contentions do not allege the project's inconsistency with policies and standards of the certified LCP. Additionally, certain new contentions raised for the first time after the close of the appeal period are not valid grounds for appeal.

d. California Environmental Quality Act documentation inadequate

The appellant contends that an Environmental Impact Report (EIR) must be prepared if it can be argued that the project may have a significant environmental impact. In the letters submitted with the appeal from the Attorney General's office and Herman Fitzgerald, the issue is further elaborated. Herman Fitzgerald states that the coastal development permit violates California Environmental Quality Act (CEQA) because an EIR, not a Mitigated Negative Declaration (MND), is required. He states that the impact analysis (that an EIR would disclose) including the effectiveness of the proposed mitigation measures and alternatives is entirely absent. Mr. Fitzgerald also states that as the final alignment of the cable route has not been chosen, there has been no finite project description for review by the public.

In the letter from the Attorney General's office it is stated that a MND can be adopted only if all potentially significant impacts will be avoided or reduced to insignificance. The letter argues that in order for this to occur, project plans must be specific and incorporate specific and definite mitigation measures. It concludes that the MND is deficient as a fully informative environmental document under CEQA asserting that the proposed mitigation measures are not site-specific, defer to the conclusions of future studies, or are inadequate to support a conclusion that effects will be less than significant.

The appellant also contends that the Williams MND is so technical that the average reader could not verify the document's accuracy. The appellant cites one inaccuracy in the MND which asserts that the primary industry in Western Mendocino County is logging. The appellant asserts that tourism and not logging is western Mendocino's main industry.

The California Environmental Quality Act provides that a Lead Agency can determine the appropriate level of environmental review for development activities that are proposed within their jurisdiction. The County has determined that the California Public Utilities Commission is the lead agency on this project and they have determined the level of documentation. The appellant does not cite a specific LCP policy that they feel the County's actions did not conform with in this regard. The concerns raised by the appellant do not allege the project's inconsistency with existing policies of the certified LCP. Thus the Commission finds that this contention is not a valid ground for appeal.

e. Issues Raised After Close of Appeal Period

After the appeal period ended, the Commission received a letter from the Coastal Residents Coalition written by Alan Levine of the Coastal Action Group. Because the Levine letter came in after the close of the appeal period, only those comments in the letter that supplement or clarify issues brought up in the appeal documents filed prior to the close of the appeal period can be valid grounds for appeal. Issues raised in his letter that are not addressed in the previously submitted appeal documents and therefore are not

valid grounds for appeal include: 1) Williams' failure to employ required mitigations in the non-coastal zone portion of the project 2) Williams' failure to follow the project design in the non-coastal zone portion of the project, 3) the appropriateness of extending the winter operating period, 4) Lack of compliance with Clean Water Act responsibilities to obtain additional storm water and waste discharge permits 5) the effectiveness of monitoring procedures, 6) the appropriateness of drilling or trenching of perennial streams before July 15.

E. Information Needed for de Novo Review of Application

As stated above, Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a de novo hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the de novo hearing to a subsequent date. The de novo portion of the appeal must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP and the public access and public recreation policies set forth in the Coastal Act.

Given that the project the Commission will be considering de novo has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP and the public access and public recreation policies set forth in the Coastal Act. Following is a discussion of the information needed to evaluate the development.

Delineation of project route and description of project activities

As discussed previously, the project raises a substantial issue of conformance with the planning and locating new development policies of the LCP regarding avoidance of adverse cumulative impacts in part because the extent of the project area and project activities have not been fully described. The current project description includes a contingency route, which may or may not be used. In addition, the project description defers the locations of staging areas and disposal sites to the pre-construction phase. The current description of the project route and location of activities does not facilitate adequate analysis of the effects of the project on coastal resources. A definitive description of the project and the project route needs to be submitted. The description should be comprehensive for the coastal zone portion of the project and include locations of all staging and disposal areas, locations of all assist points and handhole (vault) areas, and the specific method of construction to be utilized along each segment of the route.

Erosion Control

As discussed previously, the project raises a substantial issue of conformance with the planning and locating new development policies of the LCP regarding the avoidance of adverse cumulative erosion and sedimentation impacts. The Commission finds that adverse cumulative impacts cannot be properly assessed because the project as approved postpones the determination of erosion control methods to the construction phase. A description of the site-specific erosion control methods proposed for each segment of the route needs to be submitted. This information would identify the baseline mitigations to be employed at site-specific locations along route segments. The description and analysis should include location of drainage features, wetlands, special habitats, and the methods to be employed at each of the sites. The need to review this information does not infer that preconstruction controls and mitigations should not be employed based on local conditions. However, the information would allow the Commission the opportunity to review and analyze the extent and effectiveness of proposed erosion control.

Wetlands Survey

As discussed previously, the project raises a substantial issue of conformance with the planning and locating new development policies of the LCP regarding adverse cumulative impacts to wetlands. The adverse cumulative impacts cannot be properly assessed because wetlands within the coastal zone have not been adequately delineated. The applicant did not delineate wetlands as defined by the LCP. The applicant used the Army Corp of Engineers' definition to delineate wetlands. The Army Corp defines a wetland as containing all three of the following factors: hydrophytic vegetation, hydric soils, and wetland hydrology. The County's LCP requires only one of these conditions needs to be present to qualify as a wetland. Therefore, wetland habitats within the coastal zone may not have been mapped or considered for protection measures according to the policies of the LCP. In addition, the special condition imposed by the county requiring detailed wetland mapping prior to project construction indicates that all wetland areas

may not have been surveyed. To properly determine the extent of all wetlands in the project area, a wetland evaluation prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance should be prepared. It should be noted that part of this procedure includes topographic maps delineating the area surveyed, extent of the wetland, extent of the riparian habitat, and the 100 foot-buffer zone around the outer edge of the riparian.

Botanical Surveys of Rare Plants

As discussed previously, the project raises a substantial issue of conformance with the planning and locating new development policies of the LCP regarding avoidance of adverse cumulative impacts to rare plants. It was found that avoidance of the adverse cumulative impacts cannot be properly assessed because the mitigations for sensitive resources such as threatened, endangered, and rare plants were not consistent with the policies in the LCP. Threatened, endangered, and rare plants (including pygmy vegetation) are considered Environmentally Sensitive Habitat Areas (ESHA) by the LCP. Therefore, they are afforded the ESHA protection measures as outlined in the LCP. These measures include a 100 foot-buffer zone from the outer edge of the habitat. The mitigation measures proposed by the applicant for sensitive plant species include only a 20-foot exclusion zone around sensitive plant species. To determine the full extent of all that needs to be avoided to protect sensitive plant species, a full report of all botanical surveys prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance should be provided. This information should include topographic maps delineating the area surveyed, extent of the occurrence, and the 100 foot-buffer zone around the outer edge of the habitat.

Point Arena Mountain Beaver Surveys

As discussed previously, the project raises a substantial issue of conformance with the planning and locating new development policies of the LCP regarding avoidance of adverse cumulative impacts to the endangered Point Arena Mountain Beaver. The adverse cumulative impacts to the species cannot be properly assessed because complete surveys have not been prepared for the entire proposed routes of the cables within the range of the species. Threatened, endangered, and rare wildlife species (including Point Arena Mountain Beaver) are protected as Environmentally Sensitive Habitat Areas (ESHA) by the LCP and are afforded the ESHA protection measures as outlined in the LCP. To determine the full extent of the project's adverse effects on the Point Arena Mountain Beaver, a full report of all wildlife surveys of the species prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance should be provided.

Archaeological Surveys

As discussed previously, the project raises a substantial issue of conformance with the planning and locating new development policies of the LCP regarding avoidance of adverse cumulative impacts to archaeological resources. The adverse cumulative impacts to archaeological resources cannot be properly assessed because it was unclear whether all surveys for cultural resources had

been conducted. To ensure that archaeological resources would not be adversely effected, verification that all surveys for the project area have been completed needs to be submitted. The project area to be surveyed should include the project route as well as all staging, disposal, and other facility sites.

Bentonite Use

As discussed previously, the project raises a substantial issue of conformance with the planning and locating new development policies of the LCP regarding avoidance of adverse cumulative impacts to coastal streams caused by bentonite spills from directorial boring activities. The project raised a concern with potential "fracouts," where bentonite could escape into the environment. To ensure that the potential to "fracout" is minimized to the greatest extent possible, geo-technical investigations of all sites where boring will occur need to be submitted. The results of the investigations should be submitted with recommendations for minimization of bentonite escapement into the environment and site specific descriptions and analyses of the locations and methods for bentonite and slurry disposal and staging.

Feasible Less Damaging Alternatives

As discussed in the LCP finding above, the project raises a substantial issue of conformance with the planning and locating new development policies of the LCP regarding concentrating new development combining the proposed cable installation project with other cable projects could potentially reduce the overall extent of adverse impacts on coastal resources. When the Commission hears the project de novo, it must determine that there is no feasible less environmentally damaging alternative to the proposed project. Therefore, information on the feasibility of installing cables in conjunction with other fiber optic projects will be important for the Commission's review.

Without the above information, the Commission cannot reach a final determination whether adverse cumulative impacts on coastal resources would be avoided by the project and the consistency of the project with the policies of the LCP.

EXHIBITS:

1. Regional Location Map- Point Arena to Robbins Cable Route
2. Site Location Map- Point Arena to Robbins Cable Route
3. Regional Location Map- Point Arena to Sacramento Cable Route
4. Site Location Map- Point Arena to Sacramento Cable Route
5. Notice of Final Action and Findings and Conditions of Approval
6. Appeal to Commission, September 15, 2000
7. Appellant's Correspondence
8. Applicant's Correspondence
9. Other Correspondence

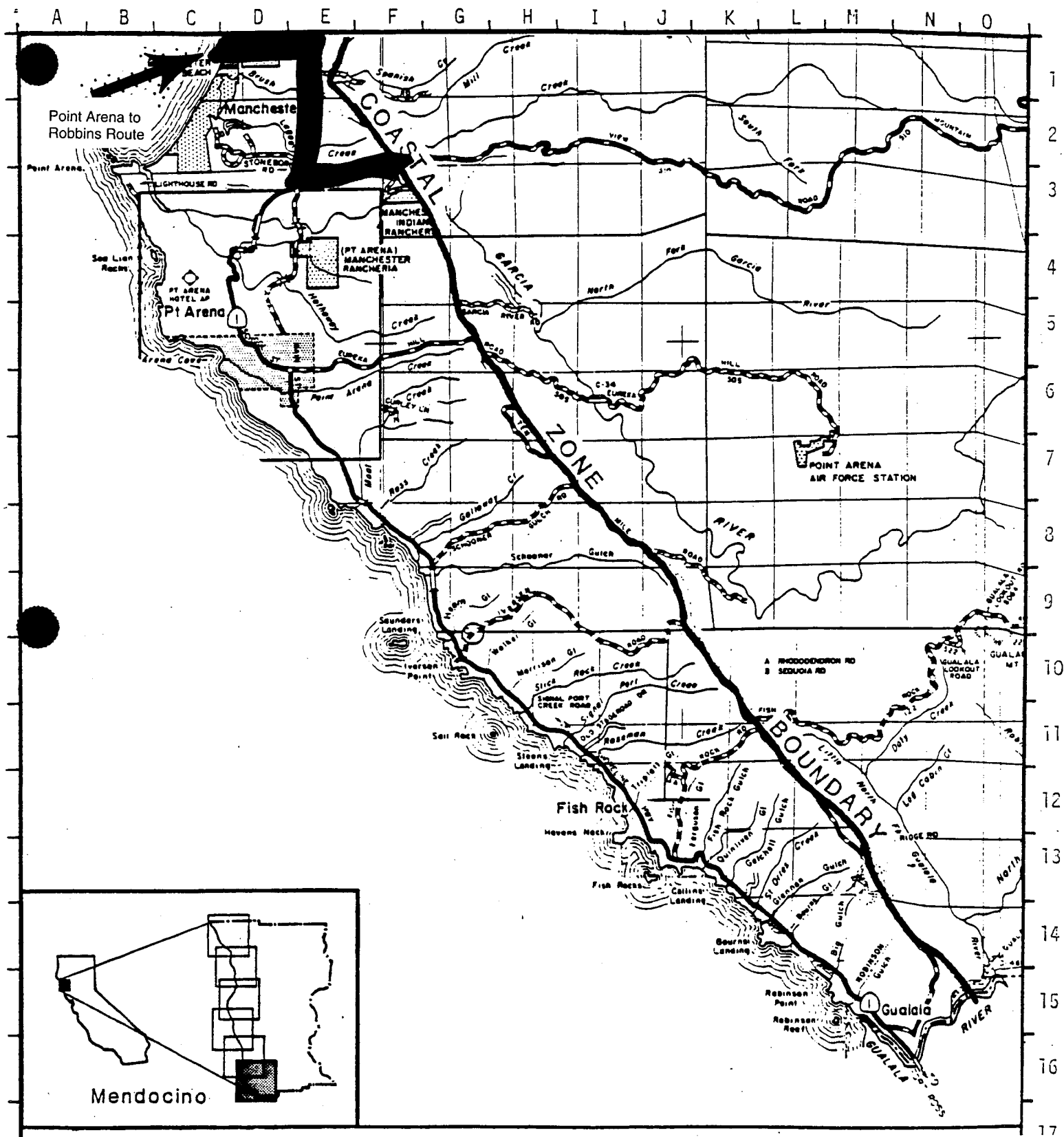


EXHIBIT NO. 1

APPLICATION NO.
A-1-MEN-00-043

POINT ARENA TO
ROBBINS CABLE ROUTE

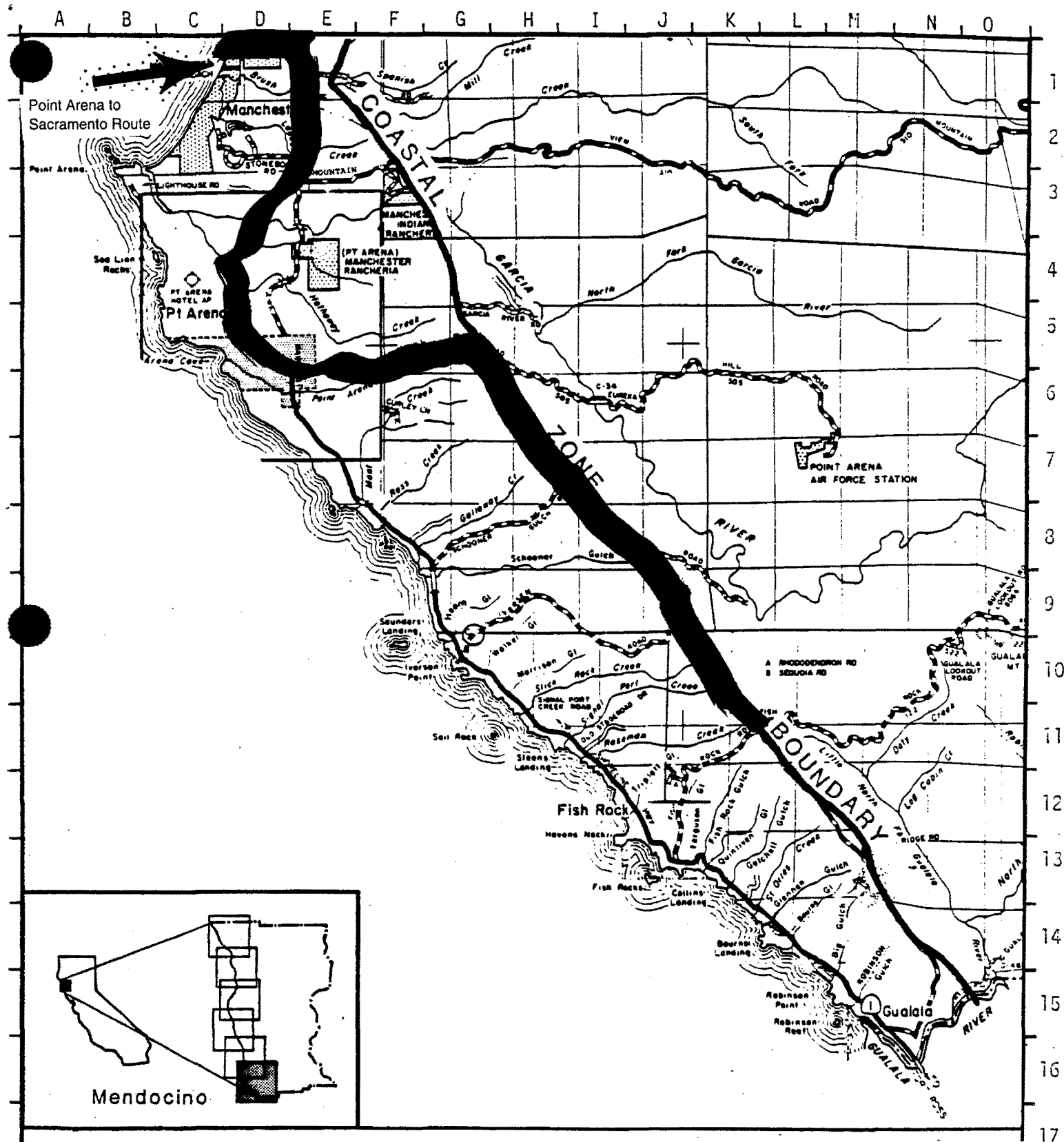
REGIONAL LOCATION
MAP

County of Mendocino

LOCATION MAP

1 0
miles

California Coastal Commission



LOCATION MAP

County of Mendocino

EXHIBIT NO. 3

APPLICATION NO.
A-1-MEN-00-043

POINT ARENA TO
SACRAMENTO CABLE
ROUTE
REGIONAL LOCATION
MAP

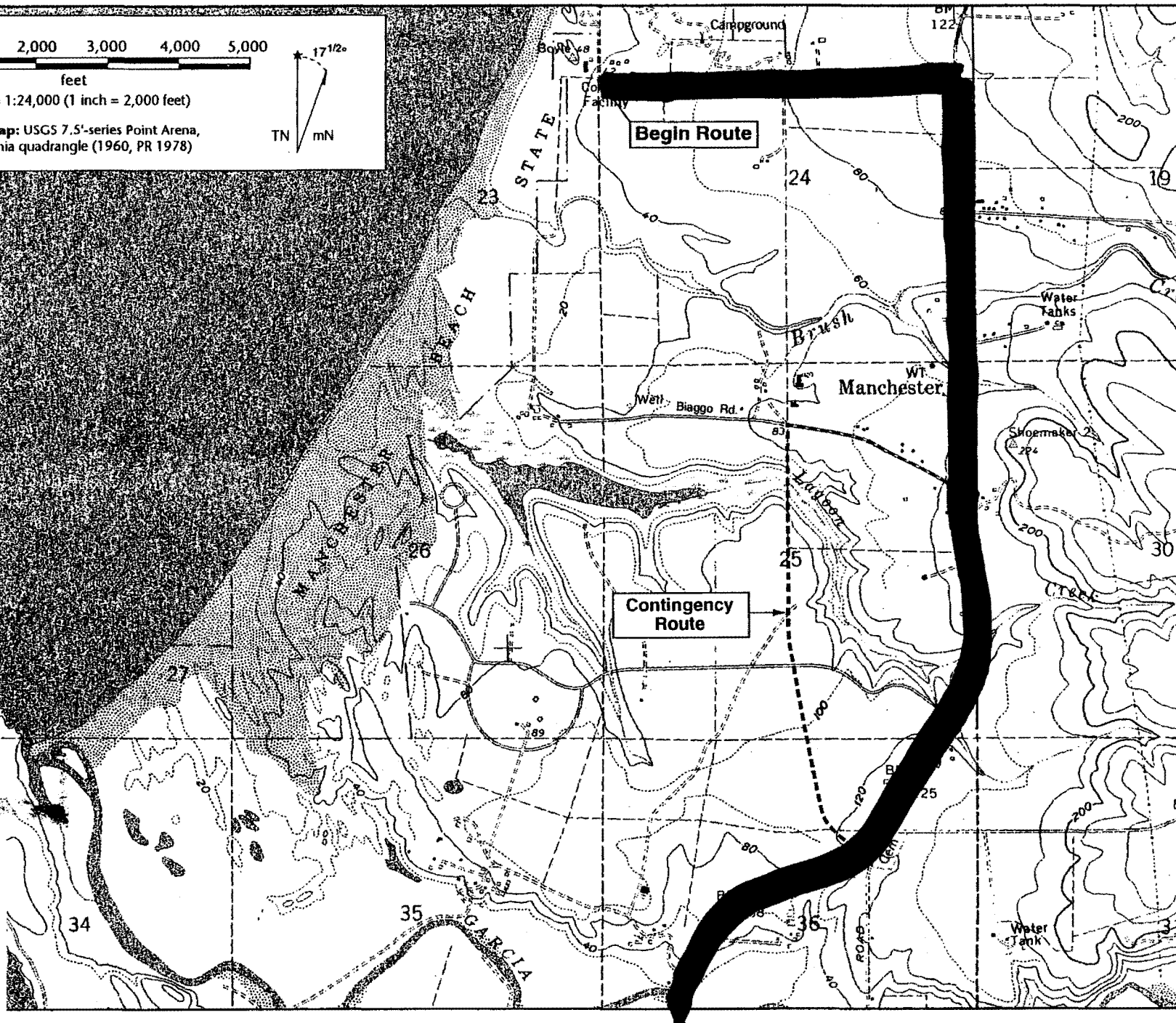
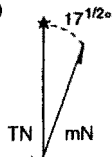


0 1,000 2,000 3,000 4,000 5,000

feet

Scale = 1:24,000 (1 inch = 2,000 feet)

Base Map: USGS 7.5'-series Point Arena,
California quadrangle (1960, PR 1978)



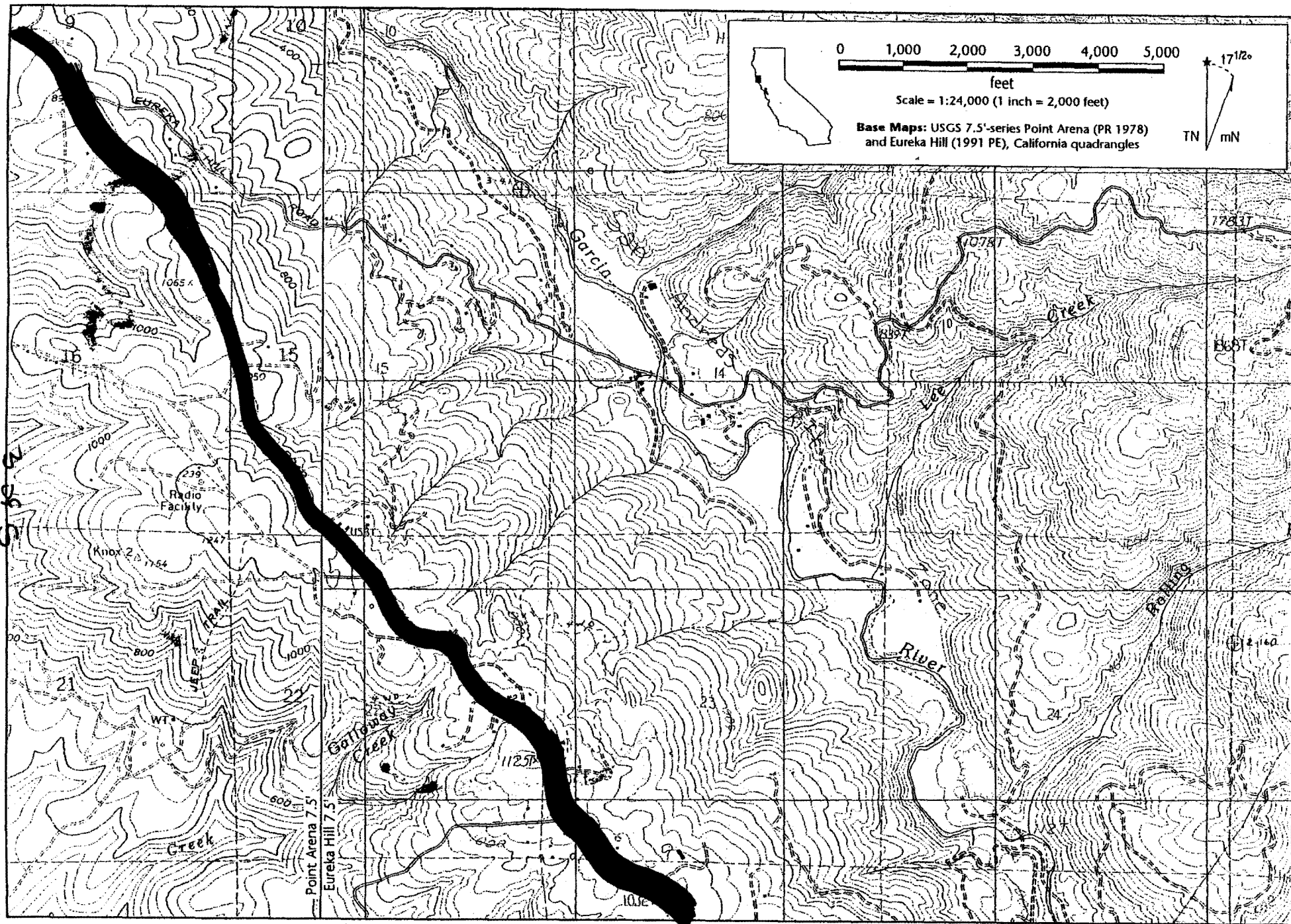
Cultural Resources of the Point Arena – Sacramento Fiber Optic Cable Route
Map 24

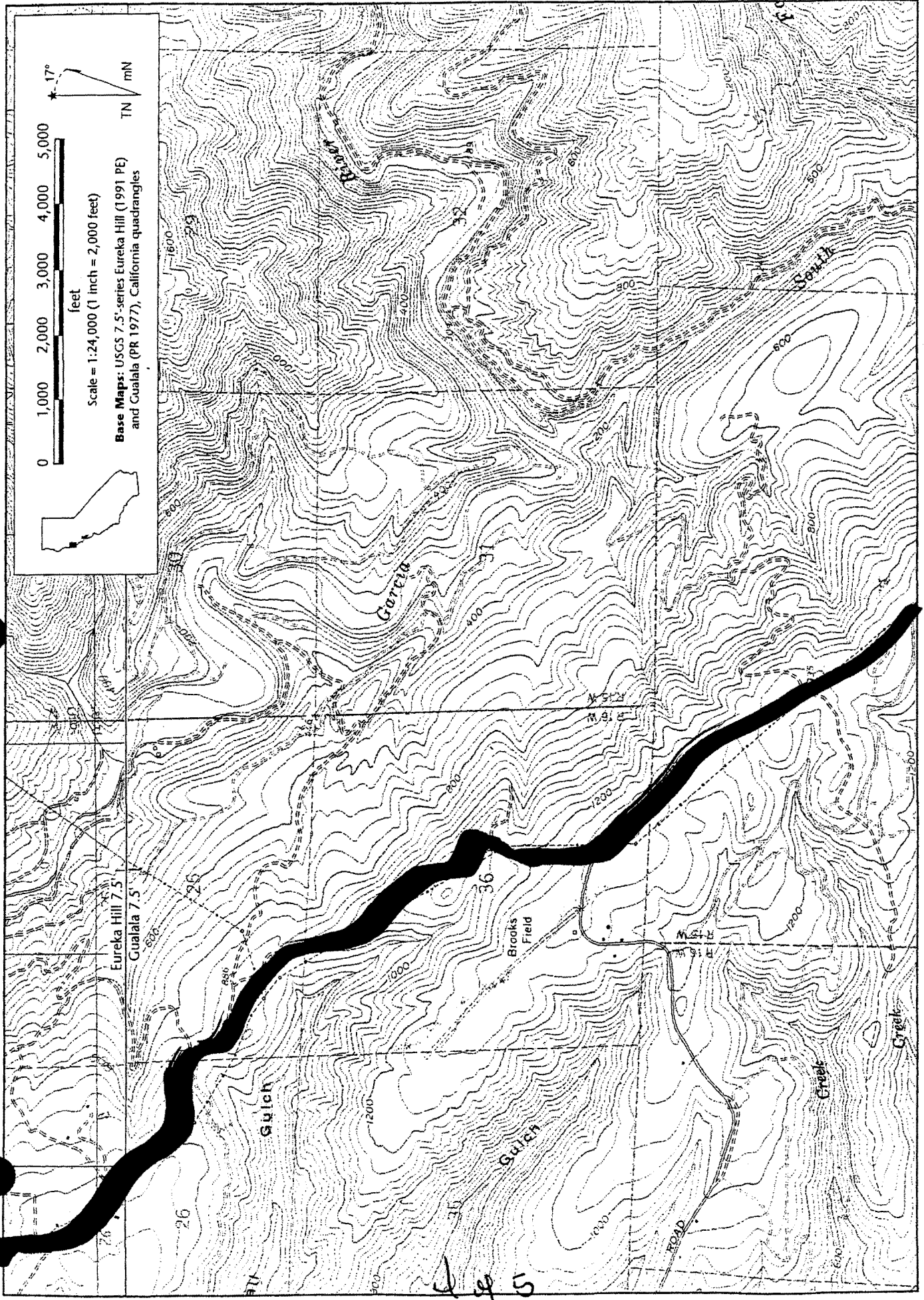
EXHIBIT NO. 4

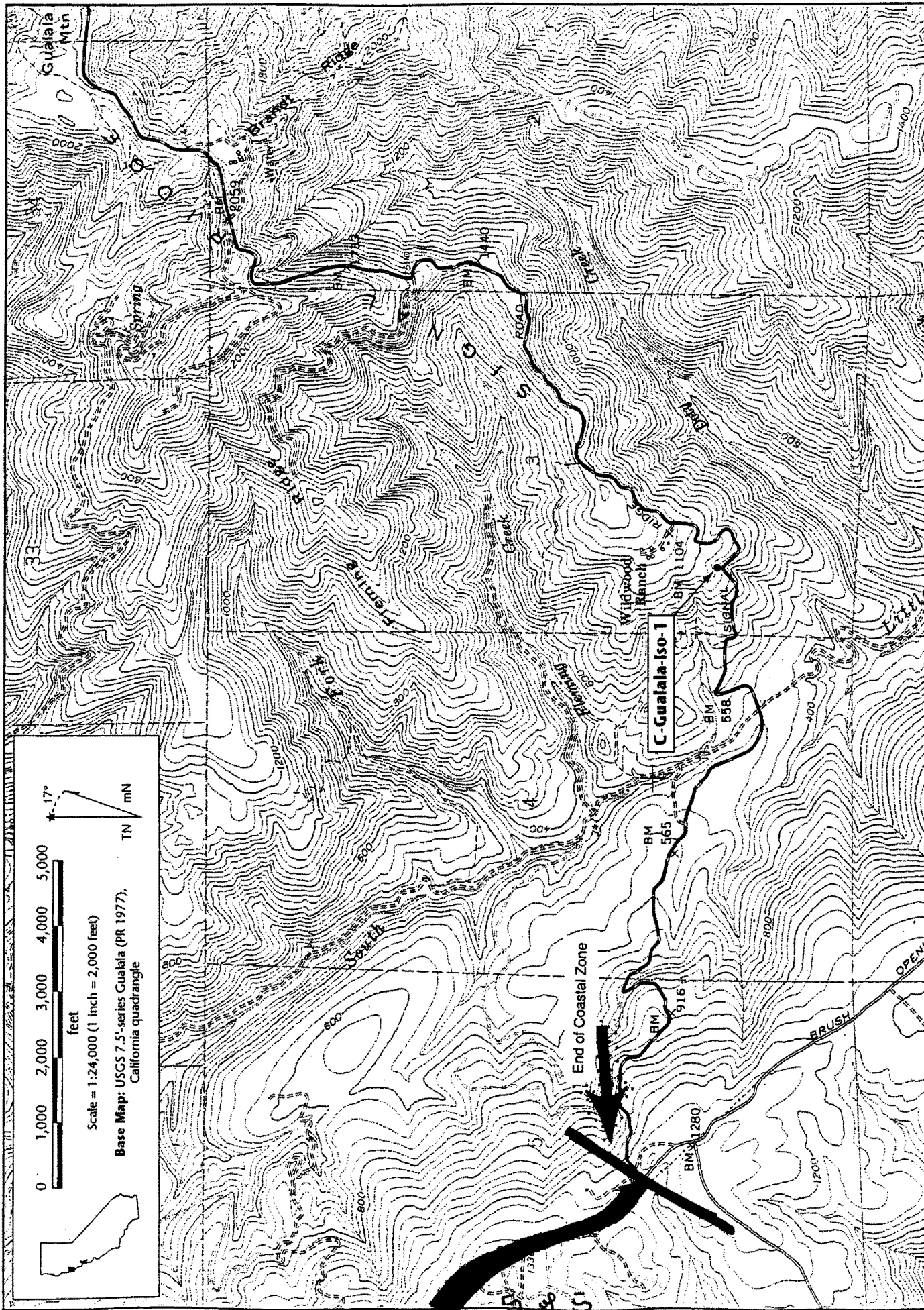
APPLICATION NO.
A-1-MEN-00-043

POINT ARENA TO
SACRAMENTO CABLE
ROUTE

SITE LOCATION MAP
(1 of 5)







CALIFORNIA COASTAL COMMISSION

WEST DISTRICT OFFICE
SUITE 200
FORT BRAGG, CA 95501
(707) 445-7833



NOTIFICATION OF APPEAL PERIOD

DATE: September 15, 2000
TO: Charles Hudson, Project Coordinator
County of Mendocino, Department of Planning and Building Services
790 South Franklin Street
Fort Bragg, CA 95437
FROM: Sue Sniado, Coastal Program Analyst *Sue Sniado*
RE: **Application No. 1-MEN-00-275**

Please be advised that on September 13, 2000 our office received notice of local action on the coastal development permit described below:

Local Permit #: CDU 5-2000

Applicant(s): Williams Communications, Inc.

Description: Coastal Development Use Permit for the coastal zone portions of the installation of two fiber optic cables and associated facilities from the Manchester Radio Facility near Point Arena to the central valley communities of Robbins and Sacramento.

Location: Beginning at the Manchester Radio Facility, the Robbins route goes to Robbins via Boonville, Ukiah and Calpella. The Sacramento route goes to Sacramento via Yorkville, Cloverdale, Santa Rosa and Fairfield, Mendocino County

Unless an appeal is filed with the Coastal Commission, the action will become final at the end of the Commission appeal period. The appeal period will end at 5:00 PM on September 27, 2000.

Our office will notify you if an appeal is filed.

If you have any questions, please contact me at the address and telephone number shown above.

cc: Williams Communications, Inc.
Phil Eikenberry

EXHIBIT NO.	5
APPLICATION NO.	A-1-MEN-00-043
NOTICE OF FINAL ACTION AND FINDINGS AND CONDITIONS OF Approval (1 of 19)	



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

501 LOW GAP ROAD • ROOM 1440 • UKIAH • CALIFORNIA • 95482

RAYMOND HALL, DIRECTOR

Telephone 707-463-4281

FAX 707-463-5709

pbs@co.mendocino.ca.us

www.co.mendocino.ca.us/planning

September 11, 2000

RECEIVED
SEP 13 2000

NOTICE OF FINAL ACTION

CALIFORNIA
COASTAL COMMISSION

Action has been completed by the County of Mendocino on the below described project located within the Coastal Zone.

CASE#: CDU 5-2000

DATE FILED: February 8, 2000

OWNER: VARIOUS OWNERS, PRIMARILY PUBLIC ROADS

APPLICANT: WILLIAMS COMMUNICATIONS, INC C/O PHIL EIKENBERRY

REQUEST: Coastal Development Use Permit for the coastal zone portions of the installation of two fiber optic cables and associated facilities from the Manchester Radio Facility near Point Arena to the central valley communities of Robbins and Sacramento.

LOCATION: Within the Coastal Zone, beginning at the Manchester Radio Facility, the Robbins route goes east on Kinney Road, south on Highway 1, east on Mountain View Road to the coastal zone boundary, and on to Robbins via Boonville, Ukiah and Calpella. Also beginning at the Manchester Radio Facility, the Sacramento route goes east on Kinney Road, south on Highway 1, east on Riverside Drive and Eureka Hill Road, south on Ten Mile Road, Ten Mile Cut off Road, and Iversen Road, then east on Fish Rock Road, where it leaves the coastal zone and goes on to Sacramento via Yorkville, Cloverdale, Santa Rosa and Fairfield.

PROJECT COORDINATOR: Charles Hudson

ACTION TAKEN:

On July 20, 2000, the Planning Commission approved the above described project. The project was subsequently appealed at the local level. The Board of Supervisors, at the August 22, 2000 hearing on the appeal, upheld the action of the Planning Commission and approved the project. See attached documents for the findings and conditions in support of these decisions.

This project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

Attachments

cc: Williams Communication C/O Phil Eikenberry
Coastal Commission
Assessor

2 of 19

FINAL FINDINGS AND CONDITIONS
CDU 5-2000 – WILLIAMS COMMUNICATION
AUGUST 22, 2000

General Plan Consistency Finding: As discussed within the staff report, and with the inclusion of the conditions of approval, the Planning Commission finds the proposed project is consistent with applicable goals and policies of the County's General Plan.

Environmental Findings: The Planning Commission finds that the California Public Utilities Commission is the lead agency under the California Environmental Quality Act, and that the CPUC has adopted a mitigated Negative Declaration, and therefore no environmental determination need be made by the Commission. The Commission certifies that it has reviewed and considered the information contained in the Negative Declaration adopted by the CPUC prior to acting on this application.

Department of Fish and Game Findings: The Planning Commission finds that none of the fees required by Section 711.4 of the State Fish and Game Code need be collected by the County because neither a Negative Declaration nor an Environmental Impact Report is being adopted by the County in conjunction with the project.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning districts applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning districts; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. Environmentally Sensitive Habitat Areas.
 - (a) The resource as identified will not be significantly degraded by the proposed development.
 - (b) There is no feasible less environmentally damaging alternative.

- (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.
- 8. The proposed use is compatible with the long-term protection of resource lands.
- 9. Agricultural Land Impact Findings.
 - (a) The project maximizes protection of environmentally sensitive habitat areas;
 - (b) The project minimizes construction of new roads and other facilities;
 - (c) The project maintains views from beaches, public trails, roads and views from public viewing areas, or other recreational areas;
 - (d) The project ensures the adequacy of water, waste water disposal and other services;
 - (e) The project ensures the preservation of the rural character of the site;
 - (f) The project maximizes preservation of prime agricultural soils;
 - (g) The project ensures existing land use compatibility by maintaining productivity of on-site and adjacent agricultural lands.

Project Findings: The Planning Commission, making the above findings, approves #CDU 5-2000 subject to the following conditions of approval.

CONDITIONS OF APPROVAL:

- 1. This permit shall become effective after all applicable appeal periods have expired, or appeal processes have been exhausted. Failure of the applicant to make use of this permit within 2 years shall result in the automatic expiration of this permit.
- 2. Construction, operation and maintenance of the project shall comply with the all of the design features and mitigation measures applicable to the coastal zone portions of the project that are proposed in the Negative Declaration, including those contained in the September 1999 and April 2000 Final Mitigated Negative Declarations containing responses to comments.
- 3. Areas of disturbed soil shall be reseeded and covered with native vegetation as soon as possible after disturbance, but no less than 100 percent coverage in 90 days after seeding.
- 4. Trenching or plowing through riparian areas shall not be permitted within the coastal zone. The preferred method of crossing all streams and riparian areas shall be by attachment to existing bridges, followed by trenching within a roadway over or under existing culverts, and lastly by directional boring. Where directional boring is used, a 50 to 100 foot buffer, consistent with Section 20.496.020 of the Coastal Zoning Code, shall be maintained from the outer limit of the riparian vegetation within which no construction work shall occur.
- 5. Trenching or plowing through wetlands shall not be permitted within the coastal zone unless there is no other feasible, less environmentally damaging alternative. The

preferred method of crossing wetlands shall be by attachment to existing bridges, followed by trenching within a roadway over or under existing culverts, and lastly by directional boring. Where directional boring is used, a 50 to 100 foot buffer, consistent with Section 20.496.020 of the Coastal Zoning Code, shall be maintained from the outer limit of the wetland. Prior to initiating any construction activity within any wetland within the coastal zone, the applicant shall submit to the Department of Planning and Building Services a plot plan and written description describing the work proposed, the mitigation measures to be implemented, and information supporting the determination that no other less environmentally damaging alternative is feasible.

6. Mitigation measures proposed in the Negative Declaration for the protection of biological resources shall apply to all areas that fall within the definition of an Environmentally Sensitive Habitat Area as defined in Section 20.308.040 (F) of the Coastal Zoning Code.
7. Where the cable system crosses known active faults, the installation shall incorporate engineering design features recognized as practical and effective in reducing the probability of cable rupture in the event of displacement along the fault. Such measures may include, but are not limited to; pull boxes with slack cable on either side of the fault; additional or larger conduit; or trench backfill selected to facilitate cable system movement or surfacing without rupture.
8. Consistent with the need to identify the cable route, cable marker poles within the coastal zone shall be no larger than necessary, and where possible shall be placed in proximity to buildings, trees, or other objects, or otherwise located to be as unobtrusive as possible, and shall be made of wood. To the greatest extent possible, marker poles along portions of the route constructed jointly by Williams and AT&T shall be shared to avoid duplication of marker poles.
9. In the event that archaeological or paleontological resources are encountered during construction of the project, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
10. The applicant shall comply with all regulations of the Mendocino County Air Quality Management District, including contacting the District and obtaining an Authority to Construct permit prior to construction, if applicable.
11. Copies of Site Monitoring Reports, Violation Reports and Progress Reports that are provided to the CPUC in accordance with reporting procedures described in the monitoring plans, and that address work within Mendocino County, shall also be submitted to the Department of Planning and Building Services.
12. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from city, county, state or federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
13. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless a modification has been approved by the Planning Commission.

14. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
15. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following:
 - a. That the permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which the permit was granted have been violated.
 - c. That the use for which the permit was granted is being conducted so as to be detrimental to the public health, welfare or safety or to be a nuisance.
 - d. That a final judgment of a court of competent jurisdiction has declared one or more of the conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more of the conditions.

Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.

16. This permit is issued without a legal determination having been made upon the number, size or shape of the parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.
17. The applicant shall demonstrate to the satisfaction of County Counsel and Planning and Building Services that adequate mechanism (i.e., insurance, bond, etc.) are in place to repair any accidental damage to private property that may occur as a result of this project.
18. Any work done to repair county roads shall leave the road in a condition equal to or better than the previously existing condition of the county road.

STAFF REPORT FOR COASTAL DEVELOPMENT USE PERMIT

#CDU 5-2000
JULY 20, 2000
PAGE PC-1

OWNER: VARIOUS OWNERS, PRIMARILY PUBLIC ROADS

APPLICANT: WILLIAMS COMMUNICATIONS, INC
418 AVIATION BOULEVARD, SUITE B
SANTA ROSA CA 95403

AGENT: PHIL EIKENBERRY
AVIATION BOULEVARD, SUITE B
SANTA ROSA CA 95403

REQUEST: Coastal Development Use Permit for the coastal zone portions of the installation of two fiber optic cables and associated facilities from the Manchester Radio Facility near Point Arena to the central valley communities of Robbins and Sacramento.

LOCATION: Within the Coastal Zone, beginning at the Manchester Radio Facility, the Robbins route goes east on Kinney Road, south on Highway 1, east on Mountain View Road to the coastal zone boundary, and on to Robbins via Boonville, Ukiah and Calpella. Also beginning at the Manchester Radio Facility, the Sacramento route goes east on Kinney Road, south on Highway 1, east on Riverside Drive and Eureka Hill Road, south on Ten Mile Road, Ten Mile Cut off Road, and Iversen Road, then east on Fish Rock Road, where it leaves the coastal zone and goes on to Sacramento via Yorkville, Cloverdale, Santa Rosa and Fairfield.

TOTAL ACREAGE: Not applicable

GENERAL PLAN: AG, FL, OS, RL, RMR, RR and RV

ZONING: AG, FL, OS, RL, RMR, RR and RV

ADJACENT ZONING: Various

SUPERVISORY DISTRICT: 5

GOV. CODE 65950 DATE: . January 8, 2001

OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA:

Use Permit #U 21-87, submitted in February, 1987, by AT&T, for a fiber optic cable from Manchester to Dunnigan, was approved by the Planning Commission on October 15, 1987.

Use Permit #U 48-87, submitted in September, 1987, by AT&T, for a fiber optic cable from Manchester to Hawaii, was approved by the Planning Commission on March 3, 1988.

Use Permit #U 52-90, submitted in December, 1990, by MCI, for a microwave station at the Manchester radio facility, was approved by the Planning Commission on January 16, 1992.

Use Permit Modification #UM 48-87/91, submitted in February, 1991, by AT&T, for a fiber optic cable from Manchester to Japan, was approved by the Planning Commission on November 21, 1991.

Use Permit #U 33-91, submitted in August, 1991, by AT&T, for a fiber optic cable from Manchester to San Francisco, was approved by the Planning Commission on April 16, 1992. During construction of this project there was a bentonite spill while boring under the Garcia River, which was resolved in September, 1993.

Coastal Development Use Permit Modification #CDUM 52-90/98, submitted in September, 1998, by AT&T, for the addition of 19,500 square feet to the existing terminal building at the Manchester radio facility, was approved by the Planning Commission on April 15, 1999.

Coastal Development Use Permit #CDU 25-99, submitted in August, 1999, by AT&T Corp., for a fiber optic cable replacement project from Manchester to Dunnigan, with a branch from Cloverdale to Santa Rosa, was approved by the Planning Commission on March 16, 2000.

Coastal Development Use Permit #CDU 32-99, submitted in September, 1999, by Williams Communications, Inc. for a 10,000 square foot building in Manchester to house switching equipment and back-up batteries was approved by the Planning Commission on May 18, 2000.

Coastal Development Use Permit #CDU 9-2000, submitted in March, 2000, by AT&T Corp., for two ocean-floor cable landings and three additional bore pipes for future cable landings at the AT&T telecommunications facility at Manchester, has not yet been heard by the Planning Commission.

Coastal Development Use Permit #CDU 12-2000 and Agricultural Preserve Cancellation #A 1-2000, submitted in March, 2000 by Sprint Communications Company for a 3,456 square foot communications equipment building northeast of the intersection of Highway 1 and Kinney Road, in Manchester, and cancellation of the agricultural preserve on the 1+- acre parcel acquired for the facility.

Sprint is also planning the installation of a fiber optic cable to be installed in conjunction with the Williams cable project. The Sprint cable would connect with the facility proposed in #CDU 12-2000.

PROJECT DESCRIPTION: Williams Communications, Inc. proposes to install buried conduits, fiber optic cables and related facilities along two routes through Mendocino County. Both routes begin at the AT&T telecommunications facility at Manchester, north of Point Arena, and terminate in communities in the California central valley. For the most part, the installation is proposed to be within State and County road corridors and railroad rights-of-way. Within Mendocino County, only those portions of the two routes that are within the coastal zone are subject to approval of a use permit. Within the inland portion of the County, the installations are permitted uses.

The Point Arena to Robbins route is proposed to run east along the north side of Kinney Road, then south along the east side of Highway 1, then east along the north side of Mountain View Road, until it leaves the coastal zone. After leaving the coastal zone, the route continues through Boonville, Ukiah and Calpella to a PG&E electrical substation in Redwood Valley, where it connects with overhead cable installed along a PG&E power line right-of-way leading to a location near Williams in the central valley, where it then continues underground to Robbins.

The Point Arena to Sacramento route is proposed to run east along the south side of Kinney Road, then south along the west side of Highway 1 to the City of Point Arena. In Point Arena the route leaves Highway 1, proceeding east along the south side of Riverside Drive, which becomes Eureka Hill Road outside the city limits. From Point Arena, the route continues along the south side of Eureka Hill Road, then along the west sides of Ten Mile Road and Ten Mile Cutoff Road, then along the east side of Iversen Road to Fish Rock Road, where it continues east, leaving the coastal zone, to continue on to Yorkville, Cloverdale, Santa Rosa, Napa, Fairfield and Sacramento.

Each of the cable routes will connect with the Williams telecommunications facility on the west side of Highway 1 in Manchester, recently approved by the Planning Commission (#CDU 32-99), where switching and signal regeneration will occur.

The applicant is also requesting approval of an alternate route for a portion of the Point Arena to Sacramento cable. The applicant has not yet obtained a commitment from Caltrans to allow encroachments along both sides of Highway 1. If use of the Highway 1 corridor is limited to one side only, Williams proposes to use a portion of the fiber optic cable route recently approved for AT&T (#CDU 25-99). In this alternative, the Point Arena to Sacramento route would leave William's telecommunications building in Manchester and proceed south along Highway 1 to Biaggi Road, then go west to the AT&T route then south back to Highway 1 at Mountain View Road. Williams does not want to install both cables in the same ditch because they want to maintain a minimum of 25 feet between the two cable routes to reduce the chance that both cables could be damaged by a single event.

The fiber optic cable system will consist of below ground and above ground components. The below ground components consist of the fiber optic cable and conduits, utility access vaults and handholes/manholes. Above ground components consist of cable marker posts and utility buildings to house optical amplification and regeneration equipment. Three or more conduits are to be installed, one for William's currently-proposed fiber optic cable, and the others for future use by Williams or other carriers. Utility vaults and handholes/manholes are placed at 3 to 5 mile intervals, with only the lid visible at the ground surface. Cable marker posts are described in the subsequent IS/MND as 3 1/2 inch diameter round PVC posts with orange caps 4 feet above ground. The caps are imprinted with embossed lettering indicating the presence of fiber optic cable. OP-AMP/regenerator stations are placed at 30 to 40 mile intervals, none of which are proposed to be located in the coastal zone.

Plowing, trenching and directional boring will be used to install the conduits along the routes. Plowing is accomplished by use of a crawler tractor pulling a large plow through which the conduit is fed into the bottom of the furrow cut by the plow as the tractor moves along. Trenching is accomplished by a rubber-tired backhoe or trencher which digs a trench 1 foot wide by 4 feet deep in which the conduit is then buried. Directional boring consists of drilling more-or-less horizontally underneath streams, sensitive habitat areas, highways, railroads, or other locations where surface disturbance must to be avoided.

Williams will be leasing a site at 135 Hay Parkway in Point Arena for use as a staging area for storage of construction materials and equipment. The site is within the city limits of Point Arena, and therefore is not under consideration in this application for a County coastal development use permit.

Some of the work will be done in cooperation with other companies that are also installing fiber optic facilities through Mendocino County. Williams will be installing conduit for much of Sprint's proposed cable. Portions of Williams' Sacramento route follow the same alignment as AT&T's Manchester to Dunnigan route, and Williams has stated it will be joint building with AT&T along the following route segments within the coastal zone:

From Biaggi Road south to the intersection of Highway 1 and Mountain View Road (a portion of the possible alternate route discussed above).

Along Eureka Hill Road from Point Arena to Ten Mile Road.

Other portions of the route outside the coastal zone will also be constructed by the two companies as a joint effort.

ENVIRONMENTAL REVIEW: The California Public Utilities Commission (CPUC) is the lead agency responsible for compliance with the California Environmental Quality Act (CEQA) for the fiber optic cable installations proposed by the applicant, and has adopted mitigated negative declarations for the project. Mendocino County is not responsible for the environmental determination for this project.

Williams' overall project includes several cable routes, only two of which pass through Mendocino County. The CPUC adopted an Initial Study/Mitigated Negative Declaration (IS/MND) for the project in September, 1999. At that time only one route was proposed through Mendocino County, going from the AT&T cable facility at Manchester to Robbins by way of Kinney Road, Highway 1, Point Arena, Eureka Hill Road, Ten Mile Road, Ten Mile Cutoff Road, Iversen Road, Fish Rock Road, Highway 128 and Mountain House Road before leaving the County. In the IS/MND, this route was called the Point Arena to Sacramento route due to Robbins proximity to Sacramento. During the preparation of the IS/MND, the design was revised, using Mountain View Road to get to

Robbins and adding a cable to Sacramento using a more southerly version of the original Robbins route. In order to address environmental impacts along the portions of the routes not covered in the IS/MND, a Subsequent Initial Study/Mitigated Negative Declaration (SIS/MND) was prepared, which was adopted by the CPUC on June 8, 2000. The SIS/MND incorporates the original IS/MND by reference. The result is that the environmental review for the coastal zone portion of the Sacramento route is addressed in both the IS/MND and the SIS/MND, while the Robbins route is covered in the SIS/MND.

(The IS/MND consists of the Initial Study/Draft Mitigated Negative Declaration, Volumes I and II, dated August 1999, and the Initial Study/Final Mitigated Negative Declaration, Volume III, dated September 1999. The SIS/MND consists of the Subsequent Initial Study/Draft Mitigated Negative Declaration, Volumes I, IIa and IIb, dated January 2000, and the Subsequent Initial Study/Final Mitigated Negative Declaration, Volume III, dated April 2000. The SIS/MND also incorporates the IS/MND by reference. In this staff report, "Negative Declaration" will be used to refer to the entire collection of environmental documents prepared for the project. IS/MND or SIS/MND will be used when necessary to distinguish between one or the other of the two sets of documents.)

Because the CPUC has already adopted a Negative Declaration for the project, it is not necessary for Mendocino County to perform the usual environmental review normally conducted in conjunction with an application for a coastal development use permit. However, CEQA does require that the County certify, prior to acting upon the project, that the decision-making body did review and consider the information contained in the lead agency's Negative Declaration. In addition, Section 20.532.095 of the Coastal Zoning Code requires that the Commission find that the project will not have any significant adverse impacts on the environment and the Commission must also find that mitigation measures incorporated into the project and included in the Negative Declaration are adequate to achieve compliance with the County's Coastal Plan and Zoning Ordinance. If not, additional conditions may be imposed by the County to achieve compliance.

The following portion of this report briefly summarizes potential impacts and mitigation measures described in the Negative Declaration. For a complete discussion of the project, the environmental issues and mitigation measures, the reader is referred to the Negative Declaration documents referenced above, copies of which are available at the Ukiah and Fort Bragg offices of the Planning and Building Services Department and at selected libraries.

Aesthetics: The project was found to have little potential for long-term aesthetic impacts due to the fact that most of the installation will be underground, and will be installed along public road corridors and railroad rights-of-way. The OP-AMP/regenerator structures will be aboveground, but none are to be located within the coastal zone. Short-term aesthetic impacts will occur during construction, however, measures incorporated for reclamation of the work areas were found to be sufficient to mitigate potential impacts.

Agricultural Resources: No significant impacts to agricultural resources were found likely to occur.

Air Quality: Potential air quality impacts are only anticipated during construction of the project, with the exception of diesel generators at the OP-AMP/regenerator stations, which are not located in the coastal zone. Best management practices are to be employed to control dust during construction and to maintain vehicles in good operating condition to avoid significant impacts to air quality. Reestablishment of ground cover to preconstruction levels is proposed to eliminate long-term sources of dust.

Biological Resources: The Negative Declaration lists a number of possible impacts to biological resources, including disturbance of sensitive plant and wildlife species, disturbance of plant and wildlife habitat, and introduction or spreading of noxious plants. Potential impacts were found to be mitigated to a level of insignificance through general project commitments and specific mitigation measures. Project commitments include construction monitoring by qualified botanists and resource specialists, education of construction crews and limiting areas of disturbance in proximity to resource areas. Sensitive areas are to be marked prior to construction activities, and avoided where possible, or bored to avoid disturbance. Construction is to be scheduled around breeding seasons of sensitive species. Areas disturbed by construction are to be restored following construction, and monitored to ensure success. A Storm Water Pollution Prevention Plan (SWPPP) will be prepared and implemented to avoid impacts to fish and their habitat.

Cultural Resources: A search of the records at Sonoma State University revealed no recorded archaeological sites within 1/8th of a mile of the project route within the coastal zone. Work will be stopped and archaeological assessments conducted should any resources be discovered during construction.

Geology and Soils: Possible impacts related to geology and soils include damage to the cable from seismic events, erosion resulting from construction activities and landslides caused by the cable installation. The Negative Declaration states that the project will be designed to avoid such adverse impacts. The potential for erosion is to be mitigated through implementation of the Storm Water Pollution Prevention Plan (SWPPP) administered by the State Water Quality Control Board under the National Pollutant Discharge Elimination System (NPDES) program. The objective of the SWPPP is to minimize erosion, sedimentation and runoff, and to promote long-term reestablishment of preconstruction site conditions.

Hazards and Hazardous Materials: No significant exposure to hazards or hazardous materials is anticipated to result from the project. All applicable requirements for the storage and use of such materials as fuels and lubricants for construction equipment are to be met.

Hydrology and Water Quality: Water quality impacts could result from the project from construction within dry stream channels or ditches, removal of riparian vegetation, accidental spills of fuels or lubricants, or accidental release of bentonite into stream channels during boring operations. The Negative Declaration determines that no significant impacts will occur as a result of measures incorporated into the project to avoid adverse impacts to water quality. No in-water work will be done in drainages supporting sensitive resources. Erosion prevention and control measures specified in the SWPPP will minimize erosion and sediment transport to streams. Also post-construction restoration of work areas will be used to prevent water quality impacts. Measures specified in the SWPPP for the prevention and clean-up of spills will prevent significant impacts from hazardous materials. Williams has adopted "General Project Commitments" that are also aimed toward prevention of water quality impacts.

Land Use and Planning: The Negative Declaration finds that there will be no significant impacts with local land use regulations because Williams will obtain local permits and comply with applicable conditions of approval.

Mineral Resources: Mineral resources will not be affected by the project due to its location predominantly within road rights-of-way, which are not available for mining, and are not located within identified mineral resource zones.

Noise: Potential noise impacts are found by the Negative Declaration to be insignificant. No permanent sources of noise associated with the project will be located in the coastal zone. Temporary noise will be generated during construction, but will not entail any unusually noisy activities. Construction will be accomplished by rubber-tired backhoes, trenchers, tracked vehicles and boring equipment. Williams will employ noise-reducing practices, including limited work hours, properly maintained mufflers and compliance with local noise regulations to avoid significant noise impacts.

Population and Housing: No significant impacts to population or housing were identified.

Public Services: The Negative Declaration found that the project would have no effect on public services, except for fire protection, and that compliance with the provisions of the Fire Prevention and Management Plan would be sufficient to mitigate any impacts on fire protection services.

Recreation: The Negative Declaration found no significant impacts that would effect recreation. Potential impacts to hunting opportunities resulting from construction activity in rural areas were found to be temporary and not significant.

Transportation and Traffic: The Negative Declaration identified four potential traffic impacts that would be less than significant with incorporated mitigation measures: increased traffic, increased hazards, restricted emergency access, and inadequate parking capacity. These impacts would only occur during construction. No permanent impacts were identified. Compliance with local encroachment permit requirements is the proposed mitigation.

Temporary reduction in level of service during construction was found to be a less than significant impact, with no mitigation required.

Utilities and Service Systems: The Negative Declaration found that the project would have no environmental effects on utilities or services systems.

Condition Number 2 is recommended to specify that all of the mitigation measures specified in the Negative Declaration, applicable to coastal zone portions of the two cable routes, are conditions of #CDU 5-2000.

LOCAL COASTAL PLAN AND ZONING COMPLIANCE REVIEW:

The IS/MND and the SIS/MND adopted by the California Public Utilities Commission each describe design features and mitigation measures incorporated into the project to reduce potential impacts to a level of insignificance. However, there are policies in the County's Coastal Plan and regulations in the County's Coastal Zoning Code that impose specific requirements, which in some cases, exceed those necessary to satisfy the California Environmental Quality Act. Following is a discussion of requirements in the County's Coastal Plan and Zoning Code, and conditions recommended where necessary to achieve compliance.

Erosion and Runoff: The Negative Declaration identifies temporary accelerated erosion and sedimentation as a possible impact that could result from soil disturbance and vegetation removal. These potential impacts are anticipated to be mitigated to less than significant by mitigation measures contained in the Storm Water Pollution Prevention Plan (SWPPP) administered by the California Water Resources Control Board

Chapter 20.492 of the Coastal Zoning Code establishes standards for the control of erosion and runoff in the coastal zone. In two instances, the standards set forth in the County Code are more rigorous than the mitigation measures proposed in the SWPPP. Regarding reestablishment of vegetation within areas disturbed by construction, the SWPPP provides that vegetation will be reestablished to a level of 70 percent of the coverage that existed prior to construction. The County Code requires that vegetation shall be established on 100 percent of the area of disturbed soil. Also, the County Code requires that native vegetation be used for any revegetation within environmentally sensitive habitat areas. The SWPPP only calls for a seed mix "suitable for the area."

Staff recommends Condition Number 3 to require that 100 percent of disturbed areas be seeded, and that native vegetation be used within environmentally sensitive habitat areas, as required by Section 20.492.015 (C) of the Coastal Zoning Code.

Environmentally Sensitive Habitat Areas - Riparian Areas: The proposed cable routes will cross numerous streams and drainages. Because the routes predominantly follow public roads, many of the crossings will occur at bridges or culverts, where the cable may either be attached to the bridge or trenched over or under the culvert, with no disturbance to the actual drainage channel. Other streams will be crossed by directional boring to avoid work within the riparian area. However, there are locations where the cable is proposed be installed by trenching or plowing directly through watercourses. The Negative Declaration states that trenching or plowing may be used in streams that are dry at the time, or in small "nonsensitive" flowing streams. Sensitive drainages are specified in the Negative Declaration to be those "...supporting threatened or endangered species or other important functions or values."

Both the Coastal Plan and the Coastal Zoning Code, specify that riparian areas, regardless of the presence of threatened or endangered species, are Environmentally Sensitive Habitat Areas (ESHAs), and there are a number of Coastal Plan policies and Coastal Zoning Code regulations that address development within ESHAs. Coastal Plan Policy 3.1-2 requires on-site inspection by representatives of the applicant, the County, Department of Fish and Game, and the Coastal Commission where there is uncertainty of the extent of the ESHA. Policy 3.1-7 requires a buffer with a minimum width of 50 to 100 feet around ESHAs. Coastal Plan Policy 3.1-10 allows utility lines within an ESHA only when a no less environmentally damaging route is feasible. Policy 3.1-12 requires that vehicle traffic within riparian areas be confined to roads. Section 20.488.010 (B) of the Coastal Zoning Code states that the productivity of wetlands, estuaries, tidal zones and streams shall be protected, preserved, and where feasible, restored. Section 20.496.035 of the Code requires that development within an ESHA be subject to all

feasible mitigation measures capable of reducing or eliminating impacts. Policy 3.1-11 requires that any riparian vegetation removed or disturbed be replaced at a minimum ratio of 1:1 with appropriate native plants.

Williams has submitted documentation identifying six stream crossings within the coastal zone along the Point Arena to Robbins Route, and nine crossings within the coastal zone along the Point Arena to Sacramento Route. One additional crossing is located on the contingency route west of Manchester. All of these crossings are proposed to be crossed by directional boring. These identified crossings are for the most part streams that are shown on USGS maps as blue line streams. In addition, there may be other smaller drainages with associated riparian areas that will be crossed by the cable routes in the coastal zone, but which have not been specifically identified. Staff recommends Condition Number 4 to achieve consistency with the Coastal Plan and Zoning Code.

Environmentally Sensitive Habitat Areas - Wetlands: Within the coastal zone the Negative Declaration lists one wetland along the Point Arena to Robbins route and 10 wetlands along the Point Arena to Sacramento route. An additional wetland (Lagoon Creek) is identified along the contingency route which follows the AT&T cable route west of Manchester. The Negative Declaration contains a number of mitigation measures to be employed to reduce impacts to wetlands ranging from avoidance to restoration following construction operations, however, the specific measures to be used at each specific wetland are not identified, with the exception of Lagoon Creek, which is to be crossed by directional boring.

Wetlands are specified in the Coastal Plan and the Coastal Zoning Code to be Environmentally Sensitive Habitat Areas (ESHAs), subject to the development restrictions listed above for riparian areas. Buried utility lines are allowed within wetlands, but only if there is no other feasible, less environmentally damaging alternative, and mitigation measures are specified to minimize environmental effects. Staff recommends Condition Number 5 to achieve consistency with the Coastal Plan and Zoning Code.

Environmentally Sensitive Habitat Areas - General: The Negative Declaration contains numerous mitigation measures to be employed for the protection of sensitive resources, which the Negative Declaration generally qualifies to mean areas supporting special status species. Within the Coastal Plan and the Coastal Zoning Code, the definition of Environmentally Sensitive Habitat Area (ESHA) is more broad than the term "sensitive resources" used in the Negative Declaration, but requires the kinds of mitigations proposed in the Negative Declaration for sensitive resources. To achieve compliance with the Coastal Plan and Coastal Zoning Code, staff recommends Condition Number 6, requiring that mitigation measures proposed in the Negative Declaration for the protection of biological resources be applied to any area that would be an ESHA as defined in Section 20.308.040 (F) of the Coastal Zoning Code.

Seismic Hazards: Within the coastal zone, the proposed fiber optic cable routes cross Alquist-Priolo Earthquake Fault Zones associated with the San Andreas Fault in three locations. One fault zone crosses both Kinney Road and Highway 1 north of Manchester. Another fault zone crosses Mountain View Road about a mile east of Highway 1. Coastal Plan Policies 3.4-1 and 3.4-4, and policies in the Seismic Safety Element of the General Plan require that extra measures be taken to facilitate the continued operation of critical facilities in the event of disasters such as earthquakes. Responding to comments made by Planning and Building Services staff addressing the IS/MND, the environmental consultant noted that the applicant's general construction specifications typically do not include special measures for crossing active faults, but that measures would be incorporated to comply with County land use policies. The SIS/MND notes that ground surface displacement along fault traces could damage the cable system, but finds the potential impact to be less than significant because the system will be "...designed to accommodate earthquake fault offsets at the soil surface and because damage to the system would not have a significant impact on humans or the environment". To achieve compliance with General Plan and Coastal Plan policies, staff recommends that Condition Number 7 be required.

Aesthetics: Within the coastal zone there will be little permanent aesthetic impact because the cable and associated facilities such as utility vaults and handholes/manholes will be placed under ground. None of the optical amplification/regeneration buildings are proposed to be located within the coastal zone. Temporary aesthetic impacts will occur during construction of the project, however, restoration of road surfaces and revegetation of other areas disturbed by the cable installation will eliminate most visible traces of the project. The only components

of the project that will remain permanently in view will be the manhole covers at vaults and the cable route marker poles spaced every 700 to 1000 feet.

Coastal Plan Policy 3.5-1 calls for the scenic and visual qualities of Mendocino County coastal areas to be considered and protected, and for new development to be subordinate to the character of its setting. Policy 3.5-3 identifies areas within the coastal zone that are designated as highly scenic areas. Policy 3.5-6 calls for development within a highly scenic area to be located out of the viewshed if possible. From the Manchester Telecommunications Facility to the northerly Point Arena City Limit, the cable routes are within a designated highly scenic area or within a community with special development criteria (Manchester). Nearly all of the portions of the applicant's cable routes within the coastal zone will be along public roads, much of them along Highway 1. Consequently the aesthetic impact of the marker poles will be more significant than where the routes follow private roads, railroads or utility lines. To keep the impact to a minimum, staff recommends Condition Number 8 to require that marker poles be no larger than necessary, that they be placed in locations chosen to be unobtrusive, and that wood posts be used. In locations where the cable facility will be constructed jointly with AT&T, staff also recommends that marker poles be shared, if possible, to avoid more poles than necessary.

Archaeological and Paleontological Resources: Record searches were obtained from the Northwest Information Center at Sonoma State University, and from other sources of cultural resource information, however, no recorded sites were found along the routes within the coastal zone. Field surveys were also conducted as part of the preparation of the Negative Declaration, and mitigation measures specified. Potential impacts to archaeological and paleontological resources are to be mitigated by avoidance of resources, monitoring during construction, and cessation of work and professional evaluation of resources discovered during construction. Coastal Plan Policy 3.5-10 requires that archaeological and paleontological resources be protected, and that the requirements of the County's Archaeological Ordinance be met. The Negative Declaration specifies notification requirements that must be met in the event of discovery during construction, however the Director of Planning and Building Services is not included, as is required by the Archaeological Ordinance. Condition Number 9 is recommended to advise the applicant of the requirements of the County's Archaeological Ordinance.

Air Quality: The Negative Declaration finds that no significant air quality impacts will result from the project. Within the coastal zone, emissions from construction equipment and dust from construction activities are the only anticipated sources of air pollution. The Mendocino County Air Quality Management District reviewed the application and requested that the applicant be required to contact the district to ascertain whether an Authority to Construct may be required. Condition Number 10 is recommended.

GENERAL PLAN CONSISTENCY RECOMMENDATION: With the addition of the conditions recommended above, the proposed project is consistent with applicable goals and policies of the General Plan.

MITIGATION MONITORING: The CPUC is responsible for ensuring full compliance with the mitigation measures adopted as part of the Negative Declaration for the project. The Negative Declaration contains mitigation monitoring plans for each of the two proposed routes. KEA Environmental, Inc., an environmental consulting company responsible to the CPUC, will provide in-field monitors to ensure compliance with mitigation measures. The monitoring plans specify reporting procedures to be followed by monitors during construction, which include weekly reports to the CPUC. Staff recommends Condition Number 11 to require that copies of the reports provided to the CPUC regarding work within Mendocino County also be submitted to the Department of Planning and Building Services.

RECOMMENDED MOTION:

General Plan Consistency Finding: As discussed within the staff report, and with the inclusion of the conditions recommended in the staff report, the Planning Commission finds the proposed project is consistent with applicable goals and policies of the County's General Plan.

Environmental Findings: The Planning Commission finds that the California Public Utilities Commission is the lead agency under the California Environmental Quality Act, and that the CPUC has adopted a mitigated Negative Declaration, and therefore no environmental determination need be made by

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the Commission. The Commission certifies that it has reviewed and considered the information contained in the Negative Declaration adopted by the CPUC prior to acting on this application.

Department of Fish and Game Findings: The Planning Commission finds that none of the fees required by Section 711.4 of the State Fish and Game Code need be collected by the County because neither a Negative Declaration nor an Environmental Impact Report is being adopted by the County in conjunction with the project.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning districts applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning districts; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. Environmentally Sensitive Habitat Areas.
 - (a) The resource as identified will not be significantly degraded by the proposed development.
 - (b) There is no feasible less environmentally damaging alternative.
 - (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.
8. The proposed use is compatible with the long-term protection of resource lands.
9. Agricultural Land Impact Findings.
 - (a) The project maximizes protection of environmentally sensitive habitat areas;
 - (b) The project minimizes construction of new roads and other facilities;
 - (c) The project maintains views from beaches, public trails, roads and views from public viewing areas, or other recreational areas;
 - (d) The project ensures the adequacy of water, waste water disposal and other services;
 - (e) The project ensures the preservation of the rural character of the site;

- (f) The project maximizes preservation of prime agricultural soils;
- (g) The project ensures existing land use compatibility by maintaining productivity of on-site and adjacent agricultural lands.

Project Findings: The Planning Commission, making the above findings, approves #CDU 5-2000 subject to the conditions of approval recommended by staff.

RECOMMENDED CONDITIONS:

1. This permit shall become effective after all applicable appeal periods have expired, or appeal processes have been exhausted. Failure of the applicant to make use of this permit within 2 years shall result in the automatic expiration of this permit.
2. Construction, operation and maintenance of the project shall comply with all of the design features and mitigation measures applicable to the coastal zone portions of the project that are proposed in the Negative Declaration, including those contained in the September 1999 and April 2000 Final Mitigated Negative Declarations containing responses to comments.
3. Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than 100 percent coverage in 90 days after seeding. In Environmentally Sensitive Habitat Areas, the revegetation shall be achieved with native vegetation.
4. Trenching or plowing through riparian areas shall not be permitted within the coastal zone. The preferred method of crossing all streams and riparian areas shall be by attachment to existing bridges, followed by trenching within a roadway over or under existing culverts, and lastly by directional boring. Where directional boring is used, a 50 to 100 foot buffer, consistent with Section 20.496.020 of the Coastal Zoning Code, shall be maintained from the outer limit of the riparian vegetation within which no construction work shall occur.
5. Trenching or plowing through wetlands shall not be permitted within the coastal zone unless there is no other feasible, less environmentally damaging alternative. The preferred method of crossing wetlands shall be by attachment to existing bridges, followed by trenching within a roadway over or under existing culverts, and lastly by directional boring. Where directional boring is used, a 50 to 100 foot buffer, consistent with Section 20.496.020 of the Coastal Zoning Code, shall be maintained from the outer limit of the wetland. Prior to initiating any construction activity within any wetland within the coastal zone, the applicant shall submit to the Department of Planning and Building Services a plot plan and written description describing the work proposed, the mitigation measures to be implemented, and information supporting the determination that no other less environmentally damaging alternative is feasible.
6. Mitigation measures proposed in the Negative Declaration for the protection of biological resources shall apply to all areas that fall within the definition of an Environmentally Sensitive Habitat Area as defined in Section 20.308.040 (F) of the Coastal Zoning Code.
7. Where the cable system crosses known active faults, the installation shall incorporate engineering design features recognized as practical and effective in reducing the probability of cable rupture in the event of displacement along the fault. Such measures may include, but are not limited to; pull boxes with slack cable on either side of the fault; additional or larger conduit; or trench backfill selected to facilitate cable system movement or surfacing without rupture.
8. Consistent with the need to identify the cable route, cable marker poles within the coastal zone shall be no larger than necessary, and where possible shall be placed in proximity to buildings, trees, or other objects, or otherwise located to be as unobtrusive as possible, and shall be made of

wood. To the greatest extent possible, marker poles along portions of the route constructed jointly by Williams and AT&T shall be shared to avoid duplication of marker poles.

9. In the event that archaeological or paleontological resources are encountered during construction of the project, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
10. The applicant shall comply with all regulations of the Mendocino County Air Quality Management District, including contacting the District and obtaining an Authority to Construct permit prior to construction, if applicable.
11. Copies of Site Monitoring Reports, Violation Reports and Progress Reports that are provided to the CPUC in accordance with reporting procedures described in the monitoring plans, and that address work within Mendocino County, shall also be submitted to the Department of Planning and Building Services.
12. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from city, county, state or federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
13. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless a modification has been approved by the Planning Commission.
14. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
15. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following:
 - a. That the permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which the permit was granted have been violated.
 - c. That the use for which the permit was granted is being conducted so as to be detrimental to the public health, welfare or safety or to be a nuisance.
 - d. That a final judgment of a court of competent jurisdiction has declared one or more of the conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more of the conditions.

Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.

16. This permit is issued without a legal determination having been made upon the number, size or shape of the parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.

DATE

CHARLES N. HUDSON - PLANNER II

CNH:sb

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7/5/2000

Appeal Fee - \$600.00

Appeal Period - 10 days

A Negative Declaration for this project was adopted by the California Public Utilities Commission.

SUMMARY OF AGENCY COMMENTS:

Planning - FB	Ensure consistency with LCP.
Department of Transportation	Application for encroachment permit has been submitted and is being reviewed.
Environmental Health - FB	No comment.
Building Inspection - FB	No comment.
Emergency Services	No response.
Assessor	No response.
Ag Commissioner	No response.
Air Quality Management	May be subject to AQMD regulations. Require compliance with regulations.
Archaeological Commission	Identify archaeological monitor, provide copy of archaeological report.
Sonoma State University	No response.
Native Plant Society	No response.
Caltrans	Need encroachment permit, also storm water runoff plan.
CDF	No response.
Dept. of Fish and Game	No response.
Div. of Mines & Geology	No response.
Coastal Commission	No response.
RWQCB	Cable installations or access roads in wetlands must be fully mitigated. Comply with Garcia River TMDL. Bridge attachment preferred to boring. SWPPP and permit required. Employ erosion <u>prevention</u> BMPs. Install erosion prevention measures before early rains, but no later than October 15. Employ measures to prevent erosion along inside ditch installations. Culvert replacement advised where necessary. A route maintenance plan is recommended. Additional directional boring BMP's are recommended. Minimize disturbance at stream crossings. Provide additional info regarding streams to be bored.
Dept of Parks & Recreation	No response.
US Fish & Wildlife Service	No response.
Army Corps of Engineers	No response.
Soil Conservation Service	No response.
Redwood Coast Fire District	No response.
Point Arena City Planning	No response.
South Coast Fire District	No response.



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

501 LOW GAP ROAD · ROOM 1440 · UKIAH · CALIFORNIA · 95482

RAYMOND HALL, DIRECTOR

Telephone 707-463-4281

FAX 707-463-5709

pbs@co.mendocino.ca.us

www.co.mendocino.ca.us/planning

July 5, 2000

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT the Mendocino County Planning Commission at its regular meeting on Thursday, July 20, 2000, at 9:00 a.m., to be held in the Board of Supervisors Chambers, 501 Low Gap Road, Ukiah, California, will conduct a public hearing on the following project at the time listed or as soon thereafter as the item may be heard.

CASE#: CDU 5-2000

DATE FILED: February 8, 2000

OWNER: VARIOUS OWNERS, PRIMARILY PUBLIC ROADS

APPLICANT: WILLIAMS COMMUNICATIONS, INC C/O PHIL EIKENBERRY

REQUEST: Coastal Development Use Permit for the coastal zone portions of the installation of two fiber optic cables and associated facilities from the Manchester Radio Facility near Point Arena to the central valley communities of Robbins and Sacramento.

LOCATION: Within the Coastal Zone, beginning at the Manchester Radio Facility, the Robbins route goes east on Kinney Road, south on Highway 1, east on Mountain View Road to the coastal zone boundary, and on to Robbins via Boonville, Ukiah and Calpella. Also beginning at the Manchester Radio Facility, the Sacramento route goes east on Kinney Road, south on Highway 1, east on Riverside Drive and Eureka Hill Road, south on Ten Mile Road, Ten Mile Cut off Road, and Iversen Road, then east on Fish Rock Road, where it leaves the coastal zone and goes on to Sacramento via Yorkville, Cloverdale, Santa Rosa and Fairfield.

PROJECT COORDINATOR: Charles Hudson

ENVIRONMENTAL DETERMINATION: A Negative Declaration (no significant environmental impacts are anticipated which cannot be adequately mitigated) has been adopted by the California Public Utilities Commission.

Your comments regarding the above project are invited. Written comments should be submitted to the Department of Planning and Building Services, at 501 Low Gap Road, Room 1440, Ukiah, California, 95482, no later than July 19, 2000. Oral comments may be presented to the Planning Commission during the public hearing.

The Planning Commission's action regarding the item shall constitute final action by the County unless appealed to the Board of Supervisors. If appealed, the Board of Supervisors action shall be final except that an approved project may be appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project. To file an appeal of the Planning Commission's decision, a written statement must be filed with the Clerk of the Board with a filing fee within 10 calendar days of the Planning Commission's decision. If you challenge the project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Department of Planning and Building Services or the Planning Commission at, or prior to, the public hearing. All persons are invited to appear and present testimony in this matter.

Additional information regarding the above noted item(s) may be obtained by calling the Department of Planning and Building Services at 463-4281, Monday through Friday, 8:00 a.m. through 5:00 p.m. Should you desire notification of the Planning Commission's decision you may do so by requesting notification in writing and providing a self-addressed stamped envelope to the Department of Planning and Building Services.

RAYMOND HALL, Director

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CALIFORNIA COASTAL COMMISSION
NORTH COAST DISTRICT OFFICE MAILING ADDRESS:
710 E STREET • SUITE 200 P. O. BOX 4908
EUREKA, CA 95501-1865 EUREKA, CA 95502-4908
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

RECEIVED
SEP 15 2000

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

CALIFORNIA
COASTAL COMMISSION

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

COASTAL RESIDENTS' COALITION
P.O. BOX 207, MANCHESTER
95459 (707) 882-2936
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: MENDOCINO COUNTY

2. Brief description of development being appealed: WILLIAMS COMMUNICATIONS
COASTAL PERMIT
FOR LAYING FIBER OPTIC CABLE

3. Development's location (street address, assessor's parcel no., cross street, etc.): INSTALL CABLE IN STATE & COUNTY ROADS OF COASTAL ZONE OF MENDOCINO COUNTY

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: ☒ _____
- c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-00-043

DATE FILED: 9/15/00

DISTRICT: North Coast

H5: 4/88

EXHIBIT NO.	6
APPLICATION NO.	A-1-MEN-00-043
APPEAL TO COMMISSION	SEPTEMBER 15, 2000
(page 1 of 47)	

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator c. ☐ Planning Commission
b. ☒ City Council/Board of Supervisors d. ☐ Other _____

6. Date of local government's decision: 8/22/00

7. Local government's file number (if any): CDU 5-2000

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

WILLIAMS COMMUNICATIONS GROUP, INC
WILLIAMS CENTER, TULSA, OK, 74172

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) _____

(2) TO COME

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE ATTACHED APPEAL LETTER
FROM COASTAL RESIDENTS' COALITION,
AND ADDENDUMS FROM
ATTORNEY GENERAL AND
HERMAN FITZGERALD

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

COASTAL RESIDENTS' COALITION

Barbara Reservoir

Nora Miller

Signature of Appellant(s) or
Authorized Agent

FOR COASTAL RESIDENTS' COALITION

Date 9/12/00

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

HERMAN H. FITZGERALD

A PROFESSIONAL CORPORATION

HERMAN H. FITZGERALD
CHRISTINE C. FITZGERALD

345 LORTON AVENUE, SUITE 302
BURLINGAME, CALIFORNIA 94010
TELEPHONE (650) 348-5195
FACSIMILE (650) 348-3518

July 12, 2000

Planning Commission of the County of Mendocino
and Members of the County Planning Commission
County of Mendocino
501 Low Gap Road
Ukiah, CA 95482

Attn: Raymond Hall, Planning Director

Re: Public Hearing, July 20, 2000 - 9:00 a.m.
Case#: CDU 5-2000, Coastal Development Use Permit
Application
Williams Communications Fiber Optic

To the Commission and Members of the Commission and Staff:

On behalf of Walter Stornetta and Donna Stornetta and Helen Greco, the owners of APN(s) 133-020-11 and 133-020-12 and 133-040-01 and 133-040-12, urge the Planning Commission to deny the above-entitled Application for a Coastal Development Permit ("Permit") pursuant to the currently proposed project on the grounds that approval of the Permit and/or the Initial Study/Environmental Assessment ("IS/EA") and Negative Declaration violates the California Environmental Quality Act ("CEQA").

• Coastal Development Permit Violates CEQA Because An EIR, Not A Negative Declaration, Is Required. The fundamental flaw in the Applicant's process is that the public has been denied critical environmental analysis and an opportunity to comment on the yet to be approved alignment ("Project"). This violates the central purpose of CEQA, which is to provide the public, as well as the Applicant's decision makers, with pertinent information on the Project and its environmental impacts. The proposed Negative Declaration is legally inadequate because it is not intended to address significant changes to the Project itself. (CEQA Guidelines section 15164.) An EIR is required where, as here, changes to the Project and circumstances surrounding the Project result in new significant environmental effects or substantial increases in the severity of certain previously identified significant effects. Further, even if a Negative Declaration is proper, it does not analyze the change in Project impacts. Indeed, the final project alignment has been neither determined, nor approved.

Planning Commission of the City of Mendocino and
Members of the County Planning Commission County of Mendocino
Attn: Raymond Hall, Planning Director
September 5, 2000
Page 2

• The Negative Declaration Violates The Information Disclosure Requirement Of CEQA. CEQA's central purpose is to create "an information and full disclosure statute, [with] the EIR as the method . . . [of] disclosure" (Rural Land Owners Association v. City Council (1983) 143 Cal.App.3d 1013, 1023). The EIR is the "heart of CEQA" and its purpose is "to provide public agencies and the public in general with detailed information about the effects which a proposed project is likely to have on the environment". (Public Resources Code § 21061; Karlson v. City of Camarillo (1980) 100 Cal.App.3d 789, 804.) The Applicant's process of not preparing an EIR violates CEQA's information disclosure requirements. The very impact analysis which an EIR would disclose, including the effectiveness of proposed mitigation measures and alternatives, is entirely absent. A Negative Declaration cannot serve as a procedural short-cut to expedite approval, limit the information disclosed to the public, and curtail opportunities for public review in contravention of CEQA.

• The Failure To Have An Approved Project Alignment For A Definite And Stable Project Description. CEQA requires a detailed project description in an EIR. (CEQA Guideline Section 15124.) California courts have repeatedly held that, "an accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (County of Inyo v. City of Los Angeles (1979) 71 Cal.App.3d 185, 193.) The reason for this rule is to allow the public, reviewing agencies and the decision makers to fully understand the project and its environmental impacts. Therefore, because the alignment has not been chosen, there has been no stable and finite Project description for review and comment by the public.

• In General, The Findings Are Conclusory and Not Supported By Facts. The findings do not provide sufficient facts to support its conclusion that the Project contains mitigation measures which will avoid or mitigate the significant effects on the environment. Findings on environmental impacts must "bridge the analytic gap between the raw evidence and the ultimate decision". (Topanga Association For A Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 515.) The failure to "bridge the analytic gap" with any facts or evidence to support its conclusion directly violates these principles.

In conclusion, we strongly urge the Commission to deny the Applicant's Permit and/or to require that an EIR be prepared.

Planning Commission of the City of Mendocino and
Members of the County Planning Commission County of Mendocino
Attn: Raymond Hall, Planning Director
September 5, 2000
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Attached herewith and incorporated herein by reference is May 12, 2000 letter from this office to Applicant's Senior Agent, Phil Eikenberry, requesting construction plans, environmental documents, etc. No response was received.

Very truly yours,
HERMAN H. FITZGERALD

HERMAN H. FITZGERALD

HHF:ccd
Enclosure
cc: Walter Stornetta
Helen Greco



A county road crew waited for more equipment to arrive at the west end of the Fish Rock Road closure on Friday. A half-inch of rain turned the unpaved road into a muddy mess after fiberoptic cable was laid. Steve McLaughlin photo.

CALIFORNIA I.C.O. PRICE \$1.00 SEPTEMBER 8, 2000

Mud mess after cable installation

Fish Rock Road closed by half-inch of rain

By J. Stephen McLaughlin

The first one-half inch of rain that fell this season turned 15 miles of Fish Rock Road into a soupy, mud-slick, impassible mess, after fiberoptic cable was buried in a trench in the unpaved county road. That cable installation project by Williams Communications is still under way.

The county officially closed the road to all traffic at 10:45 a.m. on Friday, September 1, but Shirley Zeni reported that the road was undriveable hours before that.

Zeni, who has driven Fish Rock Road all her life, said she was never so scared as when she tried to drive from her ranch west toward Point Arena. Driving a four-wheel drive Ford Bronco, she went into a slide at just five miles per hour, hitting the bank and ditch near the Ciapusci Ranch.

She said she had talked to Jennifer Pronsolino, who lives nearby, about

her travel plans. When Pronsolino heard Zeni's honking horn, she called her husband Ron on the cell phone. Ron found Zeni and pulled her out.

Zeni returned to her ranch, unable to get out either way.

Also early Friday morning, Shirley Zeni's daughter-in-law Jane had driven her sons east to high school in Boonville, and she barely made it back to Shirley Zeni's. Jane said that the county crew had offered to try to drive her sons back home Friday evening, helicopter them in, or put them up in a hotel — billing Williams for the cost.

Jane's husband Raymond finally mounted snow chains on his trusty 1972 Ford pickup, and negotiated the muddy road to the high school and back, retrieving their sons Friday evening.

Shirley Zeni said that Fish Rock Road has remained open throughout the years, in spite of

storms, snow, and logging trucks — sometimes the only route available when the Garcia River has closed access to Mountain View Road. This is the first time in her memory that the road has ever been closed — and by a half-inch of rain!

Zeni called the early rain a "God-send," demonstrating the damage to the road from the cable project that residents and a few officials have been warning about.

Friday morning Mendocino County Assistant Director of Transportation Bob Parker said county and Williams crews were going to lay gravel on "trouble spots."

All day Friday, and most of Saturday, nearly every gravel truck in the area seemed to be working on Fish Rock Road, laying down coarse broken rock on the muddy roadway.

The county officially reopened the road at 7:00 p.m. on Saturday.

7-47



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September 17, 1999

John Boccio
Project Manager, Environmental Projects Unit
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

DeLicia Wynn
State Clearinghouse
1400 Tenth Street
Sacramento, CA 95814

RE: Initial Study/Draft Mitigated Negative Declaration for Williams Communications, Inc.
Fiber Optic Cable System Installation Project-California Network

Dear Mr. Boccio and Ms. Wynn:

The Attorney General's Office has reviewed the draft Mitigated Negative Declaration (IS/DMND) for the proposed Williams Communications, Inc. cable installation project in California, and has concluded that the document is insufficient under the California Environmental Quality Act (CEQA) in a number of general and specific respects. This letter contains the comments of the Attorney General regarding the IS/DMND's satisfaction of the requirements of CEQA. It is focused upon several major concepts and concerns, and is not an exhaustive discussion.

The Attorney General submits these comments pursuant to his independent constitutional, common law, and statutory authority to represent the public interest. Along with other State agencies, the Attorney General has the power to protect the natural resources of the State from pollution, impairment, or destruction. (*See* Cal. Const., art. V, § 13; Cal. Gov. Code, §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office.

The CPUC is proposing to permit Williams Communications, Inc. (Williams) to embark on an extensive installation of fiber optic cable lines throughout California. The Williams project involves laying new cable along 10 proposed routes in north-central, south-central and southern California. The routes cross multiple counties and close to 4 dozen cities throughout

California, numerous major streams and rivers (Sacramento, American, Colorado, Garcia, Russian, Truckee, Yuba, Los Angeles, among others), some multiple times (e.g., Yuba River, six times), wetlands, grasslands, woodlands, forests, listed species' habitats, coastal valleys, desert, agricultural lands, San Timeteo Canyon, the Sierra Nevada and the Santa Lucia range. Although Williams proposes to utilize primarily existing rights-of-way, and in some instances existing conduits or pipelines within those rights-of-way, a substantial amount of trenching, plowing and/or boring will be required and approximately 22 regenerator stations will be constructed, posing dozens of potentially significant impacts to rivers, streams, wetlands, threatened and endangered plant, animal and aquatic species, existing public services, and other resources without adequate environmental review and mitigation. the IS/DMND lacks required information from which adequate assessment of potential impacts can be made. Further, the mitigation and avoidance measures proposed to address dozens of potentially significant impacts upon biological, cultural, stream and wetland resources, among others, fail to assure such impacts will be avoided or reduced to less than significant.

LEGAL FRAMEWORK

The Legislature enacted the California Environmental Quality Act ("CEQA"), Public Resources Code sections 21000 et seq., to "[e]nsure that the long-term protection of the environment shall be the guiding criterion in public decisions," (Pub. Res. Code, § 21001(d)), and intended CEQA "to be interpreted in such a manner as to afford the fullest possible protection to the environment" (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83, quoting *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.) The Environmental Impact Report or "EIR" is the "heart of CEQA" (Cal. Code of Regs., tit. 14, § 15003(a);¹ *City of Carmel-by-the Sea v. Board of Supervisors* (1976) 183 Cal.App.3d 229, 241.) Most importantly, the purpose of the EIR is to "demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its actions." (*No Oil, supra*, 13 Cal.3d at 86; see also *Laurel Heights Improvement Ass'n v. Regents of Univ. of California* (1988) 47 Cal.3d 376.)

Under CEQA, the lead agency must determine through the initial study whether the project "may cause a significant effect on the environment." (14 C.C.R. § 15063(b)(1)(A), (B).) "[W]henever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact, (*No Oil, Inc., supra*, 13 Cal.3d at 75), then a negative declaration is inappropriate and the law requires an EIR. (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150.)

¹ CEQA Guidelines are published in title 14 of the California Code of Regulations, sections 15000 et seq. and are binding on all state and local agencies. (CEQA Guidelines, 14 C.C.R. § 15000.)

The threshold for required preparation of an EIR is low. (*Friends of "B" Street*, 106 Cal.App.3d 988; see Pub. Res. Code, §§ 21002, 21002.1(b), 21081(a).)² "[E]vidence to the contrary does not dispense with the need for an EIR when it still can be 'fairly argued' that the project may have a significant impact." (*Stanislaus*, 33 Cal.App.4th at 151 (internal quotation omitted).) Thus, even if the record contains substantial evidence that the project will not have a significant environmental impact, an EIR must be prepared if it can also be fairly argued that the project *may* have a significant environmental impact. (*Heninger v. Board of Supervisors* (1986) 186 Cal.App.3d 601, 605-606.) An agency must determine whether any evidence supports a conclusion that the project may have a significant environmental effect regardless of any evidence denying such an effect.

CEQA allows for the preparation of a mitigated negative declaration (MND) when the initial study for a project identifies potentially significant impacts, and the project has been revised to avoid or mitigate such impacts. (Pub.Res.Code § 21064.5; CEQA Guidelines, 14 C.C.R. § 15369.5.) An MND may be adopted, however, only if all potentially significant impacts will be avoided or reduced to insignificance. (Pub.Res.Code § 21080(c)(2); CEQA Guidelines, 14 C.C.R. § 15070(b).) In order to reach such a conclusion with respect to a particular project, project plans must be specific and must incorporate specific and definite mitigation measures. (*Ibid.*) Mitigation measures dependent on future studies or promising future compliance with local regulations are not definite, do not guarantee adequate inquiry into a project's environmental effects and cannot support a conclusion that unanalyzed impacts will be less than significant. Moreover, such deferral skirts CEQA's public review requirements. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.) If there is substantial evidence in the record that, despite proposed mitigations, the project *may* still have one or more significant impacts on the environment, then an MND is improper and an EIR must be prepared.

Reliance upon mitigation measures that merely require compliance with local design, construction and safety standards and obtaining all requisite ministerial permits does not assure prevention of any potential for significant environmental impact under CEQA. Projects must agree to abide by all permitting requirements and safety and environmental regulations even in the absence of CEQA. CEQA does not provide merely a double check for a project's ability to meet other legal obligations. For example, even where the project must obtain streambed alteration permits from the Department of Fish & Game in order to proceed, CEQA requires an analysis of the potential impacts of the permitted alterations. A mitigation measure that simply recites the project proponent's obligation to obtain such permits is inadequate to support a conclusion that potential environmental impacts will be less than significant.

² For example, in *Friends of "B" Street*, *supra*, 106 Cal.App.3d at 1003, the court found that an EIR was necessary as a matter of law where a proposed street improvement project would generally disrupt the area during construction, cause the removal of 153 trees, and increase traffic and congestion.

CEQA further requires the lead agency "shall consult with all responsible agencies and with any other public agency which has jurisdiction by law over natural resources affected by the project " to obtain their recommendations regarding whether an EIR or a negative declaration should be prepared. (Pub.Res.Code § 21080.3(a); CEQA Guidelines, 14 C.C.R. § 15063(g).) Where state and federally listed species may be impacted, the California Department of Fish and Game (CDFG) and U.S. Fish and Wildlife Service (USFWS) must be consulted; where projects involve streambed alteration, CDFG must be consulted; where Section 404 of the Clean Water Act is implicated, the Army Corps of Engineers must be consulted; in addition, transportation planning agencies must be consulted if a project has state-wide, regional, or area-wide significance. (Pub.Res.Code § 21092.4.) The proposed project involves all of the above, yet relies on mitigation measures developed without consultation with these key agencies.

CEQA Guidelines require a mandatory finding of significance for any project that has "the potential to . . . threaten to eliminate a plant or animal community, [or] reduce the number or restrict the range of an endangered, rare or threatened species" thereby requiring preparation of an EIR. (CEQA Guidelines, 14 C.C.R. § 15065(a); *Mountain Lion Fnd. v. Fish & Game Commission* (1997) 16 Cal.4th 105, 124; *Mira Monte Homeowners Association v. County of Ventura* (1985) 165 Cal.App.3d 357, 363.) If a project will be built upon or within identified habitats of threatened or endangered species, or areas where such species have been observed, and the initial study reveals the project may cause species mortality and therefore may have a significant effect on the environment, an EIR must be prepared.

An EIR also must be prepared whenever a project's environmental impacts are "cumulatively considerable." CEQA requires that a lead agency must find that a project may have a significant effect on the environment, necessitating preparation of an EIR, whenever the project's potential impacts, although individually limited, are "cumulatively considerable." (Pub.Res.Code § 21083(b); CEQA Guidelines, 14 C.C.R. §§15065(c), 15064(i)(1).) To make this determination, the lead agency must evaluate the project's incremental effects in connection with the effects of past, current, and probable future projects. (CEQA Guidelines, 14 C.C.R. § 15064(i)(1).) CEQA makes it the lead agency's responsibility, in other words, to assess the potential for environmental damage from a project's contribution to the overall range of past, present and anticipated activities tending to have similar effects. For purposes of concluding that a project will not have significant cumulative effects, it is ineffective and insufficient to analyze the project's impacts in isolation from the impacts of other similar projects.

SPECIFIC COMMENTS

1. "Previously Disturbed" Rights-of-Way Immaterial to Potential For Significant Impact
To the extent that the IS/DMND relies on the fact that the project will utilize existing "previously disturbed" rights-of-way to conclude that impacts will be less than significant,

it fails to properly account for the potential for significant environmental impacts. Although most existing utility rights-of-way have been disturbed at some point in the past, this may have occurred only many decades ago, and possibly only at the surface or to a certain depth. Such prior disturbance has little relevance to the present existence of undisturbed resources within or beneath the rights-of-way. CEQA requires the IS/DMND to assess existing resources regardless of prior disturbance.

2. Failure to Identify Method of Construction

In general the IS/DMND is unclear which of several different construction methods will be used along particular route segments (trench, plow, bore, overhang or utilize existing conduit), and where within the rights-of-way the cable will be installed. This information is crucial to determining whether identified significant impacts will be avoided or reduced to insignificance. The IS/DMND's failure to identify the method of construction for each segment of the proposed routes, especially where identified significant impacts are to be avoided, undermines its conclusion that those impacts in fact will be avoided

3. Improper Deferral of Resource Analysis and Mitigation

The IS/DMND in several instances defers analysis and the development of specific and definite mitigation measures to some future date. For example, all biological and cultural resource surveys are not complete, and wetland delineation reports "are currently being prepared." (IS/DMND, vol. I, p. 1-3) ("Sample" wetlands delineation report included at vol. II, App.C) Mitigation measures contained in the IS/DMND that are dependent on completion of future studies are not definite, do not guarantee adequate inquiry into a project's environmental effects and cannot support a conclusion that identified potentially significant environmental impacts will be less than significant.

4. Lack of Project-Specific Plans

The IS/DMND contains a "sample" Storm Water Pollution Prevention Plan (SWPPP) and Fire Prevention Plan for just one of the 10 proposed routes. (IS/DMND, vol. II, App. E) In order to support a conclusion that impacts will be less than significant, the IS/DMND should include route-specific plans for each proposed route.

5. Reliance on Compliance with Local Standards Inadequate

To support its conclusion that identified potentially significant environmental impacts will be less than significant, the IS/DMND relies heavily upon mitigation measures that require compliance with local design, construction and safety standards and procurement of all requisite ministerial permits. Mitigation measures that promise future compliance with local regulations cannot alone support the IS/DMND's conclusion that identified potentially significant environmental impacts will be less than significant.

6. Failure to Consult With Responsible Agencies

Mitigation measures for potential impacts to special-status species were not developed through consultation or coordination with either CDFG or USFWS. Thus the expertise of these agencies apparently was not obtained in the process of making the decision to prepare a negative declaration rather than an EIR. (MND, vol. I, p. 5-19.) The MND violates Public Resources Code section 21080.3, which requires pre-decision consultation with all responsible agencies.

7. Potentially Significant Impacts to Listed Species Require an EIR

The proposed project passes through numerous listed species' habitats and areas where evidence of listed species habitation has been found, clearly indicating potential to reduce the numbers of restrict the range of an endangered or threatended species. The IS/DMND identifies numerous potentially significant impacts upon many threatened and endangered species of plant and animal. CEQA Guideline 15065 requires preparation of an EIR where an initial study identifies potentially significant impacts to threatened, rare or endangered species. (14 C.C.R. § 15065(a).)

8. Cumulative Impacts-Failure to Properly Analyze

The IS/DMND provides a cumulative impacts assessment for each resource category that concludes cumulative impacts either will be minimal or minor, or that the project will not contribute to any cumulative impact at all. Not one of the assessments acknowledges that the CPUC to date has approved 155 other companies to provide facilities-based telecommunications services using existing utility rights-of-way and to undertake construction where necessary, including the laying of new fiber optic cable, within some of the same alignments that the Williams project proposes to utilize. Not one acknowledges that there are currently several, possibly many, other companies engaged in fiber optic cable or other utility installation within some of the very same utility rights-of-way that Williams plans to utilize. For example, the IS/DMND states that the proposed project will not result in substantial soil erosion or contribute to cumulative traffic/transportation impacts. (IS/DMND, vol. I, pp. 5-77, 5-106) If multiple companies successively (or simultaneously) trench along the same routes to lay their cable, however, the potential for cumulative erosion and or disruption to road transportation may be quite great. San Luis Obispo County officials have informed the Attorney General's Office that due to the plans of multiple proposed and approved cable installation projects along a particularly sensitive road segment that Williams also proposes to utilize, the County is facing potentially enormous congestion and erosion problems. The IS/DMND fails to acknowledge a single other cable installation or other utility project proposed or underway along the project's proposed routes. The IS/DMND fails to comply with CEQA's requirement that the project's incremental effects be assessed "in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects." (CEQA Guidelines, 14 C.C.R. § 15064(i)(1).)

9. **Wetlands--Failure to Identify Method of Construction**

The IS/DMND concludes that the project will "avoid" significant impacts to wetlands drainages with special status species, perennial drainages, and drainages with woody riparian vegetation by either (1) routing around the resource, (2) boring under the resource, (3) attaching to a bridge, or (4) trenching over or under a culvert. Which of these 4 methods will be used in a particular locale will significantly affect the nature and level of the impacts. In most particular instances the IS/DMND fails to identify which method will be used, and lacks analysis concerning which (or whether any) method will achieve avoidance at each sensitive locale. Without at least tailoring the choice of avoidance method to each sensitive resource to be circumvented, the IS/DMND's conclusion that the resource will be avoided is unsupported.

10. **Wetlands-- Risk of Bentonite Release**

Williams proposes to bore under areas where it seeks to avoid surface disturbance due to the presence of sensitive resources -- such as biological, archeological resources, wetlands, streams and rivers containing sensitive species or habitats. Directional boring creates a risk that bentonite could escape into ground or surface waters through cracks or fissures in the soil. While the IS/DMND states that "all efforts will be made to complete directional bores at sufficient depths to prevent bentonite releases," it contains no route-specific measures to mitigate or contain the damage should such a risk materialize in the field. The IS/DMND contains a "sample" Storm Water Pollution Prevention Plan (SWPPP) for just one of the 10 proposed routes which discusses some containment measures in the event of bentonite release (IS/DMND, vol. II, App. E), but states that "[a] *specific* contingency plan for bentonite releases and potential bore abandonment *will be prepared* for more complex river crossings (Sacramento River, Colorado River, American River, and others)." (IS/DMND, vol. I, p. 2-8) (emphasis added) Mitigation measures relied upon to conclude that environmental impacts will be less than significant must be project-specific and contain complete site-specific information and analysis to demonstrate that all potential impacts have been identified and mitigated.

Furthermore, the risk of bentonite release, while perhaps small overall, largely affects areas where the impact could be enormous should the risk materialize. Multiple releases of bentonite into spawning streams occurred recently during installation of fiber optic cable in Shasta County, undermining the IS/DMND's conclusion that there will be no significant impacts, especially when (1) the IS/DMND does not contain complete site-specific prevention plans and (2) the resource areas subject to the risk of bentonite release are the most environmentally sensitive. Where there is a "reasonable probability" that a bentonite release could occur, an EIR must be prepared.

11. **Wetlands--Identified Substantial Disturbance**

One mitigation measure the IS/DMND typically applies to wetlands provides for post-construction monitoring in wetlands that "are substantially disturbed during construction."

If the project will cause, or there is a fair argument that it *may* cause substantial disturbance to an environmental resource, an EIR must be prepared.

12. **Cultural Resources--Incomplete Surveys**

The Project Description states that compliance with the National Historic Preservation Act will require further cultural resources inventory reports and evaluation of cultural resources. (IS/DMND, vol. I, p. 1-3) It appears that a cultural resources inventory report is in the process of being prepared and will be submitted to the CPUC at a future date for separate review and approval. A number of the route survey reports for cultural resources in Appendix G are labeled "98% complete." Even many of those that are labeled "100% complete," however, lack necessary information to determine whether the mitigation proposed will be feasible or effective. For example, in numerous instances the resources are not quantified.³ Without such information, the conclusion that the mitigation proposed will lessen any impact to insignificance is unsupported. For example, it is proposed that a prehistoric habitation site be avoided by boring below, but the depth of the site is unquantified, making it impossible to evaluate whether the proposed mitigation is truly feasible or effective. During installation of fiber optic cable in San Luis Obispo County recently, construction crews bored through a significant cultural resource that lay at some depth below the existing improvement *within* the right-of-way. To assure avoidance of significant impacts to sub-surface cultural and archeological resources, the more in-depth study of the location and potential impacts to such resources that an EIR typically provides is required.

13. **Cultural Resources--Mitigation Un- or Underdeveloped**

Typically cultural resources get one or both of two standard mitigation measures: Develop and Implement Avoidance Procedures (C-1), and Develop and Implement Monitoring Plan (C-2). First, in order to support the conclusion that impacts will be less than significant with *effective* mitigation these procedures and plans *should already be developed*. Second, comments for each identified resource -- while occasionally well developed, revealing that detailed examination and some degree of planning has occurred -- in most instances consist merely of an instruction such as "Bore or route cable within right of way to avoid resources," without any analysis of whether this is possible or whether it will achieve avoidance in the particular instance. (Compare Cultural resources survey, Point Arena to Sacramento, with same, Sacramento to Cal./Nev. border, App.G.) Deferring development of mitigation measures to a future time violates the CEQA requirement that members of the public and other agencies be given the opportunity to review and comment upon specific mitigation measures before the project is approved.

³ I.e., the "Resource Quantified" column of the spreadsheet is blank. See, e.g., Cultural Resource Survey, San Francisco to Santa Clara. (IS/DMND, vol. II, App.G.)

14. Use of Idle Oil Pipeline—Information and Analysis Incomplete

Certain segments of the proposed routes propose to utilize existing idle oil pipelines for installation of the cable lines. (E.g., IS/DMND, vol. I, p. 3-11) The IS/DMND contains no information on the condition of the pipelines, such as whether all hazardous materials have been removed, when and by whom, nor whether construction has the potential for causing disturbance and migration of hazardous materials associated with former use of the pipeline that may be present. Where the project proposes to utilize former oil pipelines, the IS/DMND should address the potential presence of hazardous materials.

15. Erosion/Soil Stability—Incomplete Analysis

The IS/DMND states that the project could create conditions that might lead to soil instability and long-term slope failures, but concludes this impact will be less than significant because a geotechnical analysis is being conducted "where a project route must pass through a potentially unstable area," and such analysis "may recommend that the cable be rerouted or be bored or trenched beneath the failure plane of the unstable area and that manholes and handholes not be constructed." (IS/DMND, vol. I, p.5-76) Thus the IS/DMND concludes that no mitigation is necessary. Promises to adhere to measures that may be recommended in a future study cannot form the basis for concluding that a potential significant impact will be less than significant.

16. Public Services—"No Impact" Conclusion Not Credible Without Site-Specific Analysis

The project proposes to utilize existing utility rights-of-way for the entirety of its 10 proposed routes throughout California, portions of which pass through some of the densest urban areas in the state. Some of these rights-of-way are already packed with other utility lines. Williams' preferred method of construction is trenching, which will be utilized unless the presence of some sensitive resource suggests otherwise. No detailed information is provided, however, concerning where within the rights of way Williams proposes to trench. The IS/DMND nonetheless concludes, without analysis, that such trenching will have "no impact" on public services, thus no mitigation is offered. In light of probable existing conditions and the proposed method of construction, a fuller examination of prevailing conditions and further explanation taking account of those conditions is required to support a conclusion that the project will have no impact on existing public services.

CONCLUSION

CEQA and the EIR process are designed to inform the public and decision-makers about environmental impacts of government approved projects, and to assure that significant harm to environmental resources is avoided where feasible. The IS/DMND is deficient as a fully informative environmental document under CEQA in multiple respects. The proposed project involves numerous potentially significant environmental effects. Proposed mitigation measures addressing these impacts either are not site-specific, defer to the conclusions of future studies, or are inadequate to support a conclusion that those effects will be less than significant. Potentially

John Boccio
DeLicia Wynn
September 17, 1999
Page 10

significant impacts to threatened or endangered species alone trigger the requirement of an EIR. We therefore urge the Commission to prepare or require the preparation of an EIR for the proposed project.

Thank you for the opportunity to comment. We would be happy to discuss our concerns with you. If you wish to do so, please contact the undersigned at the number listed above.

Sincerely,

Ken Alex for
RAISSA S. LERNER
Deputy Attorney General

For BILL LOCKYER
Attorney General

622-2435

17 of 47

COASTAL RESIDENTS' COALITION

P.O. Box 207, Manchester, CA95459

September 12, 2000

Executive Committee:

Greg Jirak, *President XIDAK, Inc.*

Nory Nisbet

Barbara Pesavento

APPEAL FROM 8/22/00 WILLIAMS COMMUNICATIONS COASTAL PERMIT OF MENDOCINO BOARD OF SUPERVISORS

We submit that permitting the Williams project without an EIR is inconsistent with the Local Coastal Plan and warrants a new hearing. Therefore we urge the California Coastal Commission to require preparation of an EIR to better protect the county's environment than those suggested by Williams Communications in their Mitigated Negative Declaration (MND.) This appeal does not attempt to stop the installation of fiber optic cable into Mendocino County's Coastal Zone.

The Coastal Act's mandates for new development emphasizes **three** ideas (*Coastal Element of the Mendocino County General Plan, Section 3.9 – Locating and Planning New Development.*) They Are:

1. CONCENTRATE DEVELOPMENT

The Williams development is **not concentrated** with other existing or planned fiber optic company buildings in the Manchester area.

-continued

APPEAL FROM 8/11/99 PERMIT *continued*

2. AVOIDANCE OF ADVERSE CUMULATIVE IMPACT ON COASTAL RESOURCES..

The Williams MND fails to adequately acknowledge possible **adverse cumulative impacts** or assess the project's incremental effects "*...in connection with the effects of past projects, the effects of other current projects and the effects of probable future projects.*" (CEQA Guidelines, 14 C.C.R. #150641 (i) (1).) Owing to this lack the county may face "*potentially enormous congestion and erosion problems ... because it is ineffective and insufficient to analyze the projects in isolation from the impacts of other similar projects.*" (see 9/7/99 Attorney General letter.)

3. MAINTENANCE AND ENHANCEMENT OF PUBLIC ACCESS TO THE COAST.

Both the Williams' cable routes, Mountain View and Fish Rock Roads, also provide **public access** to the coast and both roads are being severely damaged by trenching.. M.C. Thornton , Williams' attorney, stated at the 8/22 Appeal hearing that the roads will be "*equal to or better, than prior to installation.*" However a patched road makes travelling difficult, is vulnerable to early deterioration and is certainly **not enhanced** as the Coastal Act mandates. Williams should be required to resurface the entire length of both roads. Fish Rock has already suffered serious damage from trenching. On 9/1/00 fifteen miles of this road turned into "*a soupy, mud-slick, impassible mess*" after the trench was filled and subjected to only one half inch of rain. (9/8 Independent Coast Observer report.) The road was closed for a day and a half, and children could not get home from school.

Approval of Williams "*legally inadequate Negative Declaration and Permit violate the California Environmental Quality Act (CEQA.)*" (see Attorney Herman Fitzgerald letter mislaid at Planning Commission hearing.) CEQA's central purpose is to create "*an information and full disclosure statute, (with) the EIR as the method ... of disclosure.*" (Rural Land Owners Association v. City Council (1983) 143 Cal. App. 3d 1013, 1023.)
-continued

APPEAL FROM 8/11/99 PERMIT *continued*

Williams' MND is so crammed with technical data that only experts in many diverse fields ranging from hydrology to soil stability to botany could have been expected to verify the document's accuracy. In the absence of that needed step we have looked for errors that the average reader, not trained in these technical professions, could be expected to find.

One such obvious error of fact is on page 2-23 of the MND. It states: "*The primary industry in Western Mendocino County is logging.*" The County Planning Dept. reports that, based on census figures, tourism not logging is Western Mendocino's primary industry, and tourism will be negatively impacted by the damaged roads.

Just one basic error of this sort which distorts the facts must bring all Williams' MND claims into question. They **may** be incorrect. They **may** have significant environmental impacts. But, "*even if the record contains substantial evidence that the project will not have significant environmental impact, an EIR must be prepared also if it can be fairly argued that the project MAY have significant environmental impact,*" (Heninger v. Board of Supervisors 91985 186 Cal. App. 3d 601, 605-606.)

Mandating an EIR would "demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its actions." (No Oil, supra. 13 Cal3d at 86, see also Laurel Heights Imp. Assn. v. Regents of Univ. of Cal. (1988 Cal.3d 376.)

Enclosures:

9/17/99 letter from R. S. Lerner, Deputy Attorney General.

7/12/00 letter from Attorney Herman H. Fitzgerald.

Clip from 9/8/00 Independent Coastal Post.

FROM: Coastal Residents' Coalition
TO: California Coastal Commission
SENT: Sunday, October 08, 2000
SUBJECT: Addendum to Appeal A-1-MEN-00-043

Kindly add all of the following communications from Mr. Alan Levine
(27 pages total) to our Appeal.

----- To CCC
California Coastal Commission
701 E. Street, Suite 200
Eureka, CA 95501

Subject: A-1-MEN-00-043 Williams Communication Fiber Optic Project.
Reference Attached Letters: Williams Communications Cable Project - Point
Arena to Sacramento CPUC Application No. A98-12-037.

RECEIVED
OCT 10 2000

CALIFORNIA
COASTAL COMMISSION

Issue was raised by Coast Action Group concerning the above application(s).
Extensive comment on the project was made to Mendocino Department of
Planning and Building Services and the California Public Utilities
Commission starting back in January of this year.

Williams Communications has several projects on the northcoast and inland.
These projects consist of trenching and drilling for installation of
fibre-optic facility along a right of way. Much of the right of way is in
the Coastal Zone, with sensitive coastal resources, and near and adjacent to
the Coastal Zone through watersheds that drain into the Coastal Zone. The
watersheds of the proposed installation, Guadalupe River, Garcia River, and
Russian Rivers (specifically) are sensitive in nature due to erosive soils
and fractured geomorphic make up. These watersheds are all listed as
impaired on the U.S. EPA 303 (d) list due excessive inputs of pollutants,
sediment and temperature. These pollutants are responsible for loss of
fishery habitat, diminished fish populations, and estuary filling. These
rivers all drain into the Coastal Zone. It is important for the Coastal
Commission to consider riverine impacts from point and nonpoint source
pollutants due to land use activity and to act responsible to protect
coastal resources from the impacts of upstream activity as well as activity
in the Coastal Zone.

Coast Action Group has worked hard to disclose and mitigate activities from
this project that would affect the beneficial uses of water and aquatic
communities. Review of the earlier comments by Coast Action Group will help
in the understanding of problems related to this project.

Fair argument can be made that this project is part and parcel to other
projects not under review in the Coastal Zone. And, that all projects should
be considered cumulatively as to their potential to adverse impacts to
resources and mitigated appropriately. In the case of Williams
Communications cumulative impacts of different, but connected, projects has
not occurred. This known as project piecemealing under the law.

Finally, Williams Communications has not followed project design and
employed agreed upon mitigations in good faith (see Oct. 9, 2000 Complaint

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The Coastal Commission should : steps to assure full environmental review of related projects, produce appropriate mitigations, and hold up approval of this project until enforcement and assessment of related projects is completed.

Due to the severity of the problem and the sensitivity of the resources it is requested that hearings on this project be held in Northern California so that concerned parties can have access to the process.

Apologies are offered for the late appearance of this information. The changes and alterations to the permit and failure to employ mitigations were not apparent to the October 6 inspection.

Sincerely,

____ To CPUC
John Boccia
California Public Utilities Commission
505 Van Ness Ave, 4th Floor
San Francisco, CA 94102-3298

Subject: NOTICE OF CHANGE OF PROJECT - Williams Communications Cable Project
- Point Arena to Sacramento Application No. A98-12-037. CPUC Proceeding
No. A9812037
SCH # 99082006
Associated Streambed Alteration Permits.

WATERSHED CONDITIONS

Fishrock Road transects both the Gualala River and Garcia River watersheds. Both watersheds are listed as impaired due to the pollutant Sediment under Section 303 (d) of the Federal Clean Water Act and subject to discharge prohibitions. Excessive sediment has been found to be of great detriment to the salmon fisheries of both rivers and Fishrock Road is known to be a problematic sediment producer. Substantial environmental review and additional mitigations were incorporated into conditions for this project to limit controllable sources - in compliance with state anti-degradation policy and the Basin Plan

State Anti-degradation Policy (Basin Plan, Chapter 3, Water Quality Objectives):

"Controllable water quality factors shall conform to the water quality objectives contained herein. When other factors result in the degradation of water quality beyond the levels or limits established herein as water quality objectives, then controllable factors shall not cause further degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from man's activities that may influence the quality of waters of the State and that may reasonably be controlled."

FIELD REVIEW

On October 6, 2000 I participated in the field review of the above noted project. The objective of the field review was to inspect general conditions and to assess compliance with the permit conditions and agreement to employ additional mitigations as per the attached agreement. The area of the project inspected was Fishrock Road from Highway 128 to Old Stage Road on

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the Gualala Ridge. During the filed review it was noted that along the paved section of the eastern side of Fishrock Road that there were some large piles of spoils near the side of the road. The spoils were excessive and due to a change (unnoticed change) in operating procedure where the trench has been filled with cement slurry. Moving to the dirt section of Fishrock Road significant side cast and excessive berm was noticed. This is apparently due to the same change in procedure - the backfilling of the trench with cement slurry.

It was also noticed that agreement to employ mitigations for sediment control by Williams Communications was not complied with.

FAILURE TO EMPLOY MITIGATIONS

In an effort to comply with Basin Plan objectives agreement (attached) was reached with Williams Communications to perform mitigations as part of the project. Such mitigations should be completed during the term of the project which had an operating window closure of October 15. This is the normal period closing period for operations which cause disturbance and have potential to deliver sediment to watercourses from hydrologic events. Employment of such mitigations to control erosion have a substantially lessened effect if the perched soils have already been delivered to a watercourse.

Inspection of the items showed compliance in 2 out of 16 actions to be taken (numbered items). Items 4 & 5 appeared to be the only ones completed. The other listed drainage devices were not corrected as per the agreement and in fact in many cases were rendered ineffective due to graded dirt and debris at culvert inlets.

Of special note is the wet weather language on page 2. There was an early rain storm in mid-September. Erosion control procedures were not in place in this event with exhibited overland flows. Thus, sediment was delivered to watercourses from the event.

Williams Communication is not exhibiting appropriate concern for control of pollution sources in this project. Failure to install mitigations by this date indicates that there is no intent to perform on agreement to do same as there is at this point very little possibility of getting this work completed before close of the operating window noticed in the permit.

NOT FOLLOWING PROJECT DESIGN / ALTERING PROJECT

The backfilling of the cable trench with cement slurry was not noticed in the original project. This change in method represents a substantial change in the project that must be subject to environmental review.

The backfilling of the cable trench with slurry means that all the displaced soils, spoils, must be dealt with - removed by end hauling to a stable location. In the area of paved road the spoils are being placed in some not so safe locations. In the area of the unpaved road spoils end up on the outside berm of the road. The road is cut and fill construction. The road itself has severe erosion problems. Placing additional burden, overburden, on fill slopes is a common cause of eventual fill failure. These failures and erosion from sidecast results in sediment inputs that could have easily been controlled.

Remedy of the problems associated with spoils placement must be undertaken.

Filling of trench with slurry will have affect in the subsurface hydrology. The affect of a continuous cement wall below the surface is in effect a subsurface dam. Water flowing subsurface will hit this dam. The water will want to go somewhere - and it will. It will follow the dam downhill and at some point find weakness or may just exit at the road surface. In either

case potential for road damage is great or likely. This offers potential for creating additional erosive conditions on dirt roads. Historic fibre-optic projects have found this to be true with consequences of erosion and/or road damage.

Consult previous documents in the file by Dennis Jackson, Hydrologist. Further information will be added to the file upon project re-noticing and review.

Due to this change of project description, without notice; re-noticing of the project must be undertaken with an appropriate public review period.

EXTENSION OF PROJECT OPERATING WINDOW

The operating period closure of October 15 was adopted as a condition of the original project as a Best Management Practice to protect the Beneficial Uses of Water. October 15 is a typical operational deadline for industrial activity on fishbearing waterbodies. A winter or wet weather operating plan has not been approved for this project, nor should it be approved for this project.

Extension of the operating period represents a substantial change in the permit and is subject to public review and noticing.

LEGAL STANDING

Coast Action Group has legal standing as a concerned party and commentor on the project from very early on in the environmental review process. Agreement between Williams Communications and Coast Action Group (attached) is for the listed project, noted above, with all conditions and descriptions pertaining to that project as approved. This agreement assumed performance of mitigations during the project period as described in the project as of October 15, the beginning of the rainy or wet weather period. Failure to install agreed upon mitigations during the period of the project indicates nonperformance of agreement. At this point it is impossible for Williams to perform on the agreement. Coast Action Group in no way agreed to a performance date after the disclosed end of operations according to the permit at the time of issuance. Changing or altering the project in such a way as to increase the environmental risk indicates necessity for environmental review under California Law. Change in the project description indicates a fundamentally different project than initially commented on. Coast Action Group is obligated to pursue immediate performance and resource protection in the public interest.

No agency noticed by this document shall allow alteration of permit conditions, including time extensions to the permit, without due notice to interested parties and full environmental review.

Notice of any change in the disposition of this permit shall be submitted to Coast Action Group promptly.

Sincerely,

Interested Party List

Douglas Mitchell Jeffrey P. O'Donnell
Williams Communications Administrative Law Judge Division
P.O. Box 22064 RM.5011
Tulsa, OK 74121-2064 505 Van Ness Ave.
San Francisco, CA 94102

10/08/2000

24447

Mr. John McCullough Mendocino County Department of
California Public Utilities Commission Building and Planning Services
Environmental Assessment 501 Low Gap
601 University Ave., Suite 185 Ukiah, CA 95482
Sacramento, CA 95825

California Coastal Commission California Department of Fish and Game
701 E. Street, Suite 200 P.O. Box 47
Eureka, CA 95501 Yountville, CA 95499

National Marine Fisheries Service Regional Water Quality Control Board
~~177 Sonoma Ave North Coast Region~~
Santa Rosa, CA 95404 5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

State Water Resources Control Board Bill Lockyer
Division of Water Quality Attorney General
P.O. Box 944213 State of California Department of Justice
Sacramento, CA 94244-2130 1515 Clay St.
Oakland, CA 94612-1413

Alan Levine
Coast Action Group
P.O. Box 215
Point Arena, CA 95468
(707) 882-2484
(707) 542-4408 - Weekdays

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Pesavento

From: "Alan Levine" <alevine@mail.mcn.org>
To: <gbpez@mcn.org>
Sent: Sunday, October 08, 2000 10:47 AM
Subject: Williams 2(a)

January 15, 2000

Mr. John McCullough John Boccio
California Public Utilities Commission California Public Utilities Comm.
Environmental Assessment 505 Van Ness Ave, 4th Floor
601 University Ave., Suite 185 San Francisco, CA 94102

Subject: Introductory Comments Williams Communications Cable Project -
Point Arena to Sacramento, including Garcia River, Gualala River and other
watercourses. Project Case Number Unknown. Please add these comments to the
continuing file on this project.

Please be advised that Coast Action Group is a party of interest. Please
copy Coast Action Group on all noticing and distribute the initial study in
reasonable locations on the coast as well as inland.
Introduction

Proposed fibre-optic cable installation route from Point Arena to Sacramento
is likely to cause pollutant damage to already impaired watercourses.
Geomorphic and soils conditions make it almost impossible to contain erosive
sources and contaminants related to slant drilling.

Previous cable right of way installations have been fraught with problems
that affected the Garcia and Gualala Rivers with disastrous spills and
numerous violations related to sediment control. There are continuing and
ongoing problems related to these installations that are contributing to
ongoing sediment and erosion problems in the Garcia and Gualala Rivers.

Garcia Watershed - General Conditions

The Garcia River and Gualala have been listed as both sediment and
temperature impaired on U.S. EPA 305 (b) Report, and 303 (d) List.

The Clean Water Act requires state to identify those waters for which
technology-based limitations are not sufficient to produce compliance with
water quality standards (33 U.S.C. § 131 (d) (1) (A)). For such "water
quality limited waters", states must develop "total maximum daily loads"
(TMDLs) for each pollutant for which standards are being violated (33 U.S.C.
§ 131 (d) (1) (C)). The TMDL sets the maximum amount of the pollutant that
the water body can receive daily without violating the water quality
standards, with a margin of safety (Id.). EPA rules further require the
state to assign portions of the load to point and nonpoint sources along the
waterbody, limiting the allowed contribution from each category so as to
ensure the standards will be attained and maintained (40 C.F.R. § 130.7,
Handbook).

States are required to submit lists of water quality limited segments, along
with TMDLs, to EPA every two years (40 C.F.R. § 130.7 (d) (1)). EPA must
review the lists and TMDLs within thirty days and approve or disapprove
them. If the EPA disapproves the state's list or TMDLs, the Agency must
promulgate its own list and TMDLs within thirty days (33 U.S.C. § 1313 (d)
(2)).

The EPA approved (established) the Garcia River Total Maximum Daily Load

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(TMDL - the Gualala TMDL has not been completed), March 16, 1998. The TMDL was based on the proposed State TMDL for the Garcia developed by North Coast Regional Water Quality Control Board Staff. The EPA TMDL includes waste load allocations for sediment based on source analysis, a sediment budget, linkage analysis, and an allocation of expected reductions - with a 60% reduction of sediment as the projected target. Also included in the TMDL are problem statements related to instream conditions and specific Numeric Targets for Percent Fines <0.85mm, Percent Fines <6.5mm, Pool Frequency, V* (Residual Pool Volume), and Median Particle Size Diameter.

Under State of California Porter-Cologne Water Act (and to be consistent with same) and the Federal Clean Water Act, Projects in the Garcia River Watershed must now show how waste load allocations (TMDL mandated) and attainment of water quality standards will be met. All projects in the Garcia River Watershed should include reasonable assurances that the non-point source load allocations established in the TMDL will in fact be achieved.

Both the U.S. EPA Garcia River Total Maximum Daily Load for Sediment and the Regional Water Quality Control Board (TMDL), which has been approved and amended into the Basin Plan (water quality control plan) but does not have final approval from the State Water Quality Resources Control Board, are water quality control plans where the basic objective is to reduce pollutant (sediment) loading for the all of the Garcia River Drainage by 60%. The U.S. EPA TMDL has stated targets and sediment reduction objectives, but does not have an implementation plan. Never the less, under state and federal water quality law, water quality objectives must met. This means that every project in the Garcia River drainage must be assessed for sediment production potential and mitigations applied that will reduce ongoing sediment production by the indicated amount - with a reasonable degree of certainty.

Responsible agencies, NCRWQCB and CDFG, and the National Marine Fisheries Service should part in the environmental and field review and assessment of current conditions along the right of way of this project and supply assessment report with recommendations to the file.

PROJECT DESCRIPTION

Under the California Environmental Quality Act responsible administering agencies, and the public, are entitled to complete disclosure of potential impacts related to a project. With the number of perennial watercourse crossings in sensitive drainages, the mapping and discussion provided must provide adequate description or consideration of the individual watercourse crossings or potential related impacts, and possible mitigations. The administering agencies, and the public, are entitled to a description of all watercourse crossings and related mitigations with attendant mapping of each location.

The plan proposes numerous watercourse crossings in sensitive drainages, with either trenching and subsurface drilling (attendant to drilling is the likelihood of a spill). Additional consideration of remedy for such disturbance must be fully addressed.

Environmental review, mitigation employment analysis and monitoring responsibility by responsible managing agencies - California Department of Fish and Game (CDFG) and the Regional Water Quality Control Board (NCRWQCB) - must be accomplished.

Considering the sensitivity and number of drainages involved, size and duration of project (including numbers of stream crossings and erosion potential), and current lack of environmental review, a fair argument can be made for the need for a Environmental Impact Report to address these issue. I will make the case for this in the discussion that follows:

ENVIRONMENTAL REVIEW OF STREAM CROSSINGS

The Public Utilities Commission as lead agency does not have the expertise to effect environmental review on impacts related to wildlife, water quality, and fishery values. Such review should be solicited from responsible managing agencies. This project can not be approved without agency compliance in certain areas.

The California Department of Fish and Game is responsible for environmental review and related documentation for stream crossings, including Class III or intermittent streams, in their 1600 permitting process. Other review agencies, and the public, are entitled to review these permits - at the point of project review and before project approval. Submitting environmental review of stream crossings after project approval is piecemealing a project and denying review agencies and the public review opportunity - under CEQA.

The plan proposes numerous watercourse crossings of Class I, II and III watercourses by methods of slant drilling (with bentonite lubricant) or by trenching. Portions of the Garcia River and Gualala where drilling and trenching operations are proposed are known to support salmonids. Salmonids, including coho salmon, have been found the upper Garcia drainage: Mill Creek, Redwood Creek, Pardaloe Creek, Inman Creek, and Signal Creek, as well as the Garcia Mainstem. Verification of this can be made through CDFG Wendy Jones and Rick Macedo, NMFS Charlotte Ambrose and Tom Daugherty, Regional Water Quality Control Board documents Assessment of Aquatic Conditions in the Garcia River Watershed and The Garcia River Watershed Assessment Instream Monitoring Plan. Also information and coho of fish presence is contained in Timber Harvest Plan administrative records for THP 96-434, 98-040, and 97NTMP -038. Coho salmon have also been found recently in the North Fork of the Gualala River.

Garcia river lower tributaries and mainstem support populations of late spawning (to mid June) steelhead trout, coho salmon, and the Point Arena Mountain Beaver.

Slant drilling with bentonite lubricant poses risk of disturbance from breach due to inaccurate drilling course and/or breach due to hitting a fault or void in the subsurface stream morphology. Due to the existence of the probability of either of these conditions being listed at the same time, and historical performance with many failures, contingency plans for such spill must be part of the initial study. Areas of the Garcia and Gualala drainages, especially stream bed and strata, are known to have unstable and fractured morphology.

Trenching activity in Class III streams, especially in sensitive drainages, may have environmental consequences and thus are subject to environmental review by CDFG. Such review should also be made available to review agencies and the public prior to project approval. Past performance on historical (AT&T) trenching operations on two cable right of way operations was not acceptable with open ditches and spoils left in a condition likely to adversely impact water quality values

Please send me copies of all 1603 permits in this project in the Garcia River drainage.

Summary of Impacts and Mitigations

Specific mitigations need to be assessed in reference to the needs of each individual site. Some of the listed mitigations may not be sufficient to protect fishery and water quality resources. Other concerned agencies (CDFG and NCRWQCB) must be notified as to the effective implementation of such mitigations. These agencies should not only be part of the environmental review process they must participate in active on site analysis and

effectiveness monitoring.

Monitoring of mitigations should be an ongoing project with of periodic frequency of inspections - during wet weather periods (see Mitigation Monitoring).

The County of Mendocino and other review agencies (CDFG and NCRWQCB) should be notified before boring. Boring teams should be trained not to miss target and breach streams. Drilling slightly deeper may add a margin of safety.

Drilling or trenching of perennial streams should not begin before July 15. Monitoring of mitigations should be an ongoing project with of periodic frequency of inspections - during wet weather periods (see Mitigation Monitoring).

Stream crossings by vehicles should be listed in section F. Justification and mitigation is necessary.

Since it is very likely there will by some accidents, the contingency plans should be reviewed for assurance of successful implementation, if need by, by the administering agencies.

Coast Range Geology

Unstable and erosive soil conditions noted. Much of the trenching and drilling will be through fractured streambed morphology.

Cumulative Impacts

It is noted that there are unstable soils and geology, that there is degraded water quality, that there are listed fish species at risk, and that proposed activity poses risk to noted resources. It is also noted that there are continuing impacts from timber production. Quantitative instream analysis, or other scientific analysis, related to this project, in reference with other projects and their related impacts is mandated under CEQA.

Hydrologic Condition

There are other streams listed as sediment impaired as part of this project. Discussion of additional pollutant reduction plans on the other 303 (d) listed waterbodies within the project area must be included.

Clean Water Act Responsibilities

Several drainages in the cable route right of way are listed as pollutant impaired under Section 303 (d) of the federal Clean Water Act, the state Porter-Cologne Act, and the area Basin Plan (Water Quality Control Plan). Activities proposed in this project represent both point and non-point source contributions of pollutants. NPDES and storm water runoff Permits are mandated for point source contributions. Waste Discharge Permits are needed for other construction activity.

On Rivers with TMDLs (listed under Section 303 (d)), no new increases of pollutants are allowed from point sources. The Basin Plan (§ 3-1.00 - Water Quality Objectives) states that where a watershed is impaired and controllable factors are present, controllable factors are not permitted to cause further degradation. Also, on waterbodies with TMDLs, pollution reduction activity, either on site or off site or combination, must be demonstrated by employment of a specific pollution reduction strategy - specific plans with employment oversight.

Mitigation Monitoring

Due to the sensitivity of the resource and the apparent likelihood of implementation failure, independent parties (trained in watershed assessment and implementation strategy), should be employed to ensure appropriate employment of all mitigations in this process and be present during activity at sensitive locations.

As stated above, a sufficient and ongoing mitigation monitoring process, that is inclusive of review agency notification and participation, is not part of the current project. As stated in Mendocino County Policy 3.1-11 requires the inclusion of performance standards in the Coastal Zoning Ordinance for mitigation of impacts from development that might affect runoff, sedimentation, biochemical degradation, increased stream temperatures, and loss of shade along streams and in addition to the mitigation measures specified in the Initial Study. It is recommended to require that copies of the post-construction restoration reports (by independent auditor) be submitted to the Planning and Building Services Department and other responsible managing agency for fishery and water quality issues) that such conditions and monitoring and reports must be also evaluated and noticed to the reviewing agencies (CDFG and NCRWQCB) as compliance reporting and these mitigations, in and of themselves, do not necessarily meet all legal requirements.

Please be Aware - CEQA Compliance, Cumulative Impacts, Findings

The basic mandate is CEQA is for full disclosure to the public of all potential impacts related to site specific conditions on the ground and the specific conditions and practices of proposed project. This includes providing the opportunity to the public for full discussion of all pertinent factors related to a project. Environmental review of a project under CEQA must make provision for the ability of the public to comment accurately and with full knowledge on project conditions, mitigations, and proposed operations as related to the use and protection of resources.

Cumulative Impacts analysis is insufficient in the current environmental analysis of the proposed project. Historic impacts from past operations must be analyzed in the context of current and future management proposals. Also included in the environmental review of the proposed project must be analysis of monitoring, implementation procedures, and maintenance practices - establishing Best Management Practices as part of the installation and maintenance regime.

Cumulative impacts are defined as two or more individual effects which, when considered together, may compound or increase other environmental impacts. (CEQA Guidelines § 15355, Pub. Resource Code § 21083). Individual effects may be changes resulting from a single project or number of projects. The cumulative impacts from several projects are the changes in the environment which have resulted from the incremental impacts of the project(s) when added to other closely related past, present, and reasonably foreseeable future projects. Analysis of cumulative impacts should include compounding impacts and the interrelationship of projects, including timber harvest adjacent to and upstream from this area and farming impacts downstream from this project.

The requirement of cumulative impact analysis is to afford the fullest possible protection for the environment within the reasonable scope of the statutory and regulatory language.

It is vitally important to avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate detailed information. It is the lead agency's job to discover, disclose, and discuss related impacts, past, present and future. This requires exacting analysis. This analysis need not be limited

by geographic scope. Qualitative and quantitative analysis must be done, even when not necessarily feasible.

Public Resources Code §21002 requires agencies to adopt feasible mitigation measures or feasible environmentally superior alternatives.

For each significant effect identified, the lead agency must identify specific mitigation measures. The discussion must distinguish between measures proposed by a project proponent for inclusion in a project and those that, if included as part of the approval, could reasonably be expected to reduce the level of impacts. (CEQA Guidelines §15126)

Mitigation measures should be capable of (a) avoiding the impact altogether by not taking certain action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the impacted environment; or (d) reducing or eliminating the impact over time by preservation and maintenance operations during life of the action. (CEQA Guidelines §15370)

Agencies may not refuse to consider mitigations simply because a responsible agency with subsequent permitting responsibility may also have the power to address certain significant impacts. If a mitigation is found not to be feasible or appropriate, it may be altered.

Mitigation reporting and monitoring must be designed to ensure compliance, and be capable of dealing with potential failures.

Agencies should not rely on mitigation measures of unknown efficacy in concluding that significant impacts will substantially be lessened or avoided. All mitigation measures must be considered before the fact and not left for later implementation by another agency.

The CEQA process demands the mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be met in an accountable arena. Mitigations and criticism of mitigations must be supported by evidence. The rule of reasonableness applies.

Where the approving agency has received mitigation suggestions from "an agency having jurisdiction by law over natural resources affected by the project," the latter agency, if so requested by the approving agency, must prepare and submit a reporting and monitoring program applicable to the proposed mitigation measures. Pub. Resources Code § 21081.6

The above code was amended in 1992 with new subsections: Prior to the close of the public review, a responsible agency with jurisdiction over natural resources affected by a project shall either (a) submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant environmental effects identified by the commenting agency or (b) refer the lead agency to appropriate, readily available guidelines or reference documents. Mitigations must be adopted as conditions for approval.

In any case where it can be fairly argued that there is sufficient evidence of continuing impacts in a project area. And, that the activities proposed by the applicant pose sufficient threat of additional impacts that this application can not be approved without an THP (EIR) to sufficiently disclose all potential impacts and possible mitigation measures.

Findings of Fact must be supported by evidence and presented in a logical form.

For each significant effect identified, the lead agency must make one or more of the following Findings: (1) that changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the effect; (2) that the lead agency lacks jurisdiction to make the

change, but that another agency does have such authority; and/or (3) that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives. These findings must be supported by evidence.

Sincerely,

Background Information

Background information on existing conditions of the Garcia River should be part of any assessment and analysis. Such information can be found in the following documents to be found at Mendocino County Planning and Building Services, or the North Coast Regional Water Quality Control Board:

Garcia River Watershed Enhancement Plan, Mendocino County Resource Conservation District, October 1992

Garcia River Watershed Water Quality Attainment Strategy for Sediment, North Coast Regional Water Quality Control Board, 1998

Assessment of Aquatic Conditions in the Garcia River Watershed - Including Appendices 1-20, Northcoast Regional Water Quality Control Board, 1997

The Garcia River Watershed Assessment and Instream Monitoring Plan, Compiled by Forest, Soil & Water, inc., O'Connor Environmental, inc., and East-West Forestry, Fred Euphrat, 1997

Garcia River - TMDL for Sediment, U.S. EPA, 1998

Sincerely,

Alan Levine
Coast Action Group
P.O. Box 215
Point Arena, CA 95468
(707) 882-2484
(707) 542-4408 - Weekdays

10/08/2000

32947

Pesavento

From: "Alan Levine" <alevine@mail.mcn.org>
To: <gbpez@mcn.org>
Sent: Sunday, October 08, 2000 10:47 AM
Subject: Williams #3

February 23, 2000

Mr. John McCullough John Boccio
California Public Utilities Commission California Public Utilities Comm.
Environmental Assessment 505 Van Ness Ave, 4th Floor
601 University Ave., Suite 185 San
Francisco, CA 94102
Sacramento, CA 95825

Department of Planning and Building Services
County of Mendocino
501 Low Gap Road
Ukiah, CA 95482

Subject: Additional Comments Williams Communications Cable Project - Point
Arena to Sacramento, Point Arena to Robbins. Application No. A98-12-37,
Please add these comments to the continuing file on this project.

Dear Mr. Boccio:

As per your request (personal communication by telephone 2/22/00), I am
enclosing comments from the California Department of Fish and Game (CDFG) on
the AT&T Fiber Optic Right of Way Project and delivering them to you promptly.

Both the AT&T and Williams Communication Project are subject to almost
exactly the same issue.

Almost exactly the same installation procedures, including boring, and
trenching, in similar environmental settings are present in both projects.
Consideration of issue by CDFG will thus be similar, if not the same, as
demonstrated in their comments on the AT&T project.

As you can see the outstanding issues presented by CDFG are many. These
issues are similar issue raised by Coast Action Group. Under CEQA, a
Negative Declaration can not be issued without considered such issue and
employing effective mitigation. Before any action can be taken the CPUC
should wait for delivery of comment by CDFG - as negotiations between CDFG
and the CPUC for an extended comment period have taken place.

As contingency planning and environmental review, including profiles and
geotechnical studies, are insufficiently presented in the initial study;
inclusion of such new information will require either re-noticing or
conclusion of the need for a full EIR by the CPUC. William Communications
had this information available but failed to include same in the initial study.

Issue raised by CDFG (and Coast Action Group) needing additional review and
resolution include but are not limited to:

Reduction of disturbance level in the near stream and wetland zones by
limiting the operating area width and employing other protective strategy.

Resolving interference of project with hydrologic (drainage) regimes,
without disturbing aquatic habitat for listed species present in inside

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ditches and other wetland areas. This means of survey of such areas must be completed since no such assessment has taken place.

Erosion control and habitat restoration methods for disturbed areas where trenching is to occur, with effectiveness monitoring, needs additional consideration.

Botanical survey, following accepted protocol, is needed.

Adequate disclosure of boring site information and contingency plans, especially for situations of flowing water, is needed.

Construction traffic at stream crossings should be limited, with consideration to mitigations and alternative protection methods.

Water drafting from streams should be limited, with consideration to mitigations and alternative protection methods.

It must be demonstrated how monitoring procedures will provide assurance of mitigation implementation effectiveness. The combined Williams Comm. projects are vast and the monitoring staffing is slight.

Cumulative effects analysis must consider historic and ongoing impacts to affected watersheds, including the current AT&T project and past spills. To date, the cumulative effects analysis is lacking in sufficient information.

Coast Action Group supports the inclusion of the above listed issue along with additional discussion offered by CDFG (in the attached document) as a necessary part of the environmental review and disclosure process necessary under the law.

Please put this and the attache document in the record.

Williams Communications has known of the need for such information as discussed in this letter. The failure to add the needed information and inability to secure needed review and discussion with responsible agencies results from poor planning and improper review procedures on their part. Poor planning and a perceived rush to complete this project must not encumber appropriate environmental review process.

———— Motion for Leave to Intervene

Williams Communications Cable Project
Proceeding No. A9812037
Application No. 98-12-037
SCH # 99082008

Prepared by:
Alan Levine
For Coast Action Group
Box 215, Point Arena, CA (707) 542-4408

Coast Action Group requests the Public Utilities Commission to grant this motion of leave to intervene in the proceedings on the above noted project.

Coast Action Group has a long history of advocacy and involvement in issues related to the protection of the beneficial uses of water and anadromous fisheries. It is the intent of Coast Action Group to protect these public trust resources through the CEQA process.

Coast Action Group has submitted comments early on in the CEQA review of

this project. It is noted that this motion for leave to intervene is late in the process. This is due to the fact that the relationship between CEQA compliance and the CPUC approval process is unclear, cumbersome, and difficult to participate in. It should be noted that it is also difficult to get appropriate information, in a timely fashion, for purposes of filing such motion and that local noticing of such projects is insufficient.

Reasons for Intervention:

Coast Action Group seeks to protect the public interest by securing appropriate CEQA review.

Coast Action Group believes that for the protection of the beneficial uses of water, anadromous fisheries, and other aquatic resources; that it is imperative that full CEQA review and associated mitigatory process be come part of this project. Coast Action Group, independent expert, several responsible agencies, including the California Department of Fish and Game and the Regional Water Quality Control Board, have submitted comment and concerns relative to this project. These comments and concerns, including new information, have not received sufficient consideration under CEQA. To make such claim as all potential impacts have been fully mitigated or that there is no substantial risk posed by this project is not supported by evidence in the file. In fact that the evidence in the file on this case indicates that the project may or is likely to cause a significant effect on the environment.

Coast Action Group believes that appropriate CEQA review has not been accomplished and that consideration and further review in conformance with CEQA is needed and mandated under the law. Inclusion into the process as an intervenor is just about the only avenue for remedy in the CPUC process of project approval.

Other Specific Issue and New Information

Coast Action Group agrees with comment by the Attorney General on Initial Study/Draft Mitigated Negative Declaration for Williams Communications, Inc. Fiber Optic Cable System Installation Project - California Network (CPUC Decision 99-10-082). Copy attached. And, that such comment applies to Application No. 98-12-037 (SCH # 99082006) and other related projects as all of these projects are part of one master project and should be subject to review as one project under CEQA (§ 15378). Thus, the Attorney General comments should be added to the record of the proceedings. Consolidation of these projects in the review process, under rule 55, should be considered by the commission.

Specific issue raised by the Attorney General is also independently noted in comment by responsible agency and Coast Action Group. These specific areas of concern include but are not limited to: Clean Water Act and Basin Plan Objectives, Piecemealing of a project, "Previously Disturbed" Rights-of-Way immaterial to potential for significant impact, failure to identify method of construction, failure to do site specific analysis, improper deferral of resource analysis and mitigation, lack of project-specific plans, reliance on compliance with local standards inadequate, failure to consult with responsible agencies, potentially significant impact to listed species require and EIR, failure to properly analyze cumulative impacts, wetlands - failure to identify method of construction, wetlands - risk of bentonite release, wetlands - identified substantial disturbance, erosion/soil stability - incomplete analysis, and public service - "No Impact" conclusion not credible without site-specific analysis.

It has been noted that incomplete review and mitigation, under CEQA, has resulted in avoidable impacts to listed species during operations on the initial project.

Under penalty of perjury, I verify that the above information is correct.

Date _____
For Coast Action Group

I verify that service of this motion has been mailed to the parties on the service list - attached.

Date _____
For Coast Action Group

Alan Levine
Coast Action Group
P.O. Box 215
Point Arena, CA 95468
(707) 882-2484
(707) 542-4408 - Weekdays

10/08/2000

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Pesavento

From: "Alan Levine" <alevine@mail.mcn.org>
To: <gbpez@mcn.org>
Sent: Sunday, October 08, 2000 10:47 AM
Subject: Williams #2

February 10, 2000

Mr. John McCullough
%KEA Environmental, Inc., John Boccio -
California Public Utilities Commission California Public Utilities Comm.
Environmental Assessment 505 Van Ness Ave, 4th Floor
601 University Ave., Suite 185 San Francisco, CA 94102

Subject: Additional Comments Williams Communications Cable Project - Point Arena to Sacramento, Point Arena to Robbins. Application No. A98-12-037, SCH#99082006. This is to include proposed operations in the drainages of the Garcia River, Gualala River, Russian River, Sacramento River and other rivers and watercourses. Project Case Number Unknown, Please add these comments to the continuing file on this project.

Please be advised that Coast Action Group is a party of interest. Please copy Coast Action Group on all noticing.

Introduction

Williams Communications is proposing the installation of approximately 500 miles fibre-optic cable with right of way routes through the above listed drainages and watercourses. Proposed operations include potential disturbance of watercourses with proposed trenching, plowing, and slant bore drilling in area where Federally listed species of salmonids (and as of 2/4/00 Steelhead Trout) amongst other state and federally listed species are present in the project area. Such disturbance, as proposed, is likely to cause pollutant damage to already impaired watercourses. Geomorphic and soils conditions make it almost impossible to contain erosive sources and contaminants related to slant drilling and trenching operations.

Previous cable right of way installations have been fraught with problems that affected the Garcia and Gualala Rivers with disastrous spills and numerous violations related to sediment control. There are continuing and ongoing problems related to these installations that are contributing to ongoing sediment and erosion problems in the Garcia and Gualala Rivers.

The production of this document of the initial study document seems somewhat extensive and comprehensive. However it must be understood that this is a huge project, with potential for serious impacts on water quality, fishery and wildlife resources. The plan proposes hundreds if not thousands of watercourse crossings in sensitive drainages, with either trenching and subsurface drilling (attendant to drilling is the likelihood of a spill). The initial study proposed formulaic review of watercourse and erosion treatment (as BMPs) without site specific site analysis. This is not sufficient analysis or mitigatory process under the law as additional consideration of remedy for such disturbance must be fully addressed.

Also lacking is policy, environmental review, mitigation employment analysis and monitoring responsibility by responsible managing agencies. California Department of Fish and Game (CDFG) and the Regional Water Quality Control Board (NCRWQCB).

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Considering the sensitivity and number of drainages involved, size and duration of project (including numbers of stream crossings and erosion potential), and current lack of environmental review, a fair argument can be made for the need for a Environmental Impact Report to address these issue. I will make the case for this in the discussion that follows:

Garcia, Gualala, and Russian River Watersheds - General Conditions

The plan proposes numerous (actual numbers and all sites are not available in the initial study) watercourse crossings of Class I, II and III watercourses by methods of slant drilling (with bentonite lubricant) or by trenching. Portions of the Garcia, Gualala and Russian River drainages where drilling and trenching operations are proposed are known to support salmonids. Salmonids, including coho salmon, have been found the upper Garcia drainage: Mill Creek, Redwood Creek, Pardaloe Creek, Inman Creek, and Signal Creek, as well as the Garcia Mainstem. Salmonids are also present in the North Fork Gualala River, and Russian River drainages. Verification of this can be made through: CDFG Wendy Jones and Rick Macedo, NMFS Charlotte Ambrose and Tom Daugherty, Regional Water Quality Control Board documents Assessment of Aquatic Conditions in the Garcia River Watershed and The Garcia River Watershed Assessment Instream Monitoring Plan. Also information and coho of fish presence is contained in Timber Harvest Plan administrative records for THP 96-434, 98-040, and 97NTMP -038.

Slant drilling with bentonite lubricant poses risk of disturbance from breach due to inaccurate drilling course and/or breach due to hitting a fault or void in the subsurface stream morphology. Due to the existence of the probability of either of these conditions being listed at the same time, and historical performance with many failures, contingency plans for such spill are part of the initial study. Areas of the Garcia drainage, especially stream bed and strata, are known to have unstable and fractured morphology. It is not clear if these contingency plans are sufficient as the individual site analysis is not present nor is an accurate description of what is a small spill as compared to a large spill.

The Garcia River, Gualala River, and Russian River have been listed as both sediment and temperature impaired on U.S. EPA 305 (b) Report, and 303 (d) List.

The Clean Water Act requires state to identify those waters for which technology-based limitations are not sufficient to produce compliance with water quality standards (33 U.S.C. § 131 (d) (1) (A)). For such "water quality limited waters", states must develop "total maximum daily loads" (TMDLs) for each pollutant for which standards are being violated (33 U.S.C. § 131 (d) (1) (C)). The TMDL sets the maximum amount of the pollutant that the water body can receive daily without violating the water quality standards, with a margin of safety (Id.). EPA rules further require the state to assign portions of the load to point and nonpoint sources along the waterbody, limiting the allowed contribution from each category so as to ensure the standards will be attained and maintained (40 C.F.R. § 130.7, Handbook).

States are required to submit lists of water quality limited segments, along with TMDLs, to EPA every two years (40 C.F.R. § 130.7 (d) (1)). EPA must review the lists and TMDLs within thirty days and approve or disapprove them. If the EPA disapproves the state's list or TMDLs, the Agency must promulgate its own list and TMDLs within thirty days (33 U.S.C. § 1313 (d) (2)).

The EPA approved (established) the Garcia River Total Maximum Daily Load (TMDL - the Gualala TMDL has not been completed), March 16, 1998. The TMDL was based on the proposed State TMDL for the Garcia developed by North Coast Regional Water Quality Control Board Staff. The EPA TMDL includes waste load allocations for sediment based on source analysis, a sediment budget, linkage analysis, and an allocation of expected reductions - with a 60%

reduction of sediment as the projected target. Also included in the TMDL are problem statements related to instream conditions and specific Numeric Targets for Percent Fines <0.85mm, Percent Fines <6.5mm, Pool Frequency, V* (Residual Pool Volume), and Median Particle Size Diameter.

Under State of California Porter-Cologne Water Act (and to be consistent with same) and the Federal Clean Water Act, Projects in the Garcia River Watershed must now show how waste load allocations (TMDL mandated) and attainment of water quality standards will be met. All projects in the Garcia River Watershed should include reasonable assurances that the non-point source load allocations established in the TMDL will in fact be achieved.

Both the U.S. EPA Garcia River Total Maximum Daily Load for Sediment and the Regional Water Quality Control Board (TMDL), which has been approved and amended into the Basin Plan (water quality control plan) but does not have final approval from the State Water Quality Resources Control Board, are water quality control plans where the basic objective is to reduce pollutant (sediment) loading for the all of the Garcia River Drainage by 60%. The U.S. EPA TMDL has stated targets and sediment reduction objectives, but does not have an implementation plan. Never the less, under state and federal water quality law, water quality objectives must met. This means that every project in the Garcia River drainage must be assessed for sediment production potential and mitigations applied that will reduce ongoing sediment production by the indicated amount - with a reasonable degree of certainty.

Responsible agencies, NCRWQCB and CDFG, and the National Marine Fisheries Service should part in the environmental and field review and assessment of current conditions along the right of way of this project and supply assessment report with recommendations to the file.

PROJECT DESCRIPTION

Under the California Environmental Quality Act responsible administering agencies, and the public, are entitled to complete disclosure of potential impacts related to a project. With the number of perennial and intermittent watercourse crossings in sensitive drainages, the mapping and discussion provided must provide adequate description or consideration of the individual watercourse crossings or potential related impacts, and possible mitigations. This should include a complete description of the site location, mapping of site location (at adequate scale for analysis) and discussion of pertinent factors. The administering agencies, and the public, are entitled to such description of watercourse crossings and related mitigations with the attendant mapping of each location.

I say this because review of the initial study and in my discussion(s) (telephone conversations and meetings) with the project proponents, to this point, has indicated that they have done no such survey (including listing, description, and analysis) of most of the individual crossings, wetlands, drilling, culvert and drainage, erosion mediation, or otherwise environmentally sensitive sites. Some proposed drilling sites have been analyzed for such activity; e.g. proposed drilling at Garcia River at the Highway 1 bridge. Such analysis is not included in the initial study. Such analysis, must necessarily include discussion of alternative feasibility - which is not present in the document. For instance, again at the Highway One Garcia River crossing, hanging the cable on the Highway one bridge (as AT&T has done) is the environmentally superior and most cost effective alternative. However this choice may be precluded by the project proponents failure to apply to Cal Trans for a permit. Thus, a rush to meet self imposed deadlines may preclude environmentally superior decisions.

As the plan proposes numerous watercourse crossings in sensitive drainages with either trenching and subsurface drilling (attendant to drilling is the likelihood of a spill), the planning and engineering as you go concept, under project deadline duress, makes employment of appropriate analysis and mitigatory process very unlikely. Additional consideration of remedy for such disturbance must be fully addressed. The planning of installation and performance aspects on the fly (as you go) necessarily removes agencies and the public from aspects of project review and does not assure appropriate installation and employment of necessary mitigation.

Environmental review of watercourse crossings and attendant mitigation employment analysis and monitoring must be accomplished by the responsible managing agencies - California Department of Fish and Game (CDFG) and the Regional Water Quality Control Board (NCRWQCB) - must be accomplished.

As stated elsewhere in this document, work window needs to be adjusted to protect emerging fish for instream operations or where drilling may occur with potential of failure (frac-outs) if drilling occurs. This is not a problem if attachment to existing structure takes place.

ENVIRONMENTAL REVIEW OF STREAM CROSSINGS

The Public Utilities Commission as lead agency does not have the expertise to effect environmental review on impacts related to wildlife, water quality, and fishery values. Such review should be solicited from responsible managing agencies. This project can not be approved without agency compliance review in certain areas.

The California Department of Fish and Game is responsible for environmental review and related documentation for stream crossings, including Class III or intermittent streams, in their 1600 permitting process. Other review agencies, and the public, are entitled to review these permits - at the point of project review and before project approval. Submitting environmental review of stream crossings after project approval is piecemealing a project and denying review agencies and the public review opportunity - under CEQA.

Garcia river lower tributaries and mainstem support populations of late spawning (to mid June) steelhead trout, coho salmon, and the Point Arena Mountain Beaver.

Slant drilling with bentonite lubricant poses risk of disturbance from breach due to inaccurate drilling course and/or breach due to hitting a fault or void in the subsurface stream morphology. Due to the existence of the probability of either of these conditions being listed at the same time, and historical performance with many failures, contingency plans for such spill must be part of the initial study. Areas of the Garcia and Gualala drainages, especially stream bed and strata, are known to have unstable and fractured morphology.

Trenching activity in Class III streams, especially in sensitive drainages, may have environmental consequences and thus are subject to environmental review by CDFG. Much proposed activity for the project (including the two Point Arena routes) is to include cable laying by trenching in off road surface areas which would include significant activity in inside ditches (or adjacent to inside ditches). Inside ditches have potential to accumulate water and are subject to erosion problems. Treatment in these cases needs to be more fully described and mitigated. Such review should also be made available to review agencies and the public prior to project approval.

Past performance on historical (AT&T) trenching operations on two cable right of way operations was not acceptable with open ditches and spoils left in a condition likely to adversely impact water quality values

Please send me copies of all 1603 permits in this project in the Garcia River drainage.

Summary of Impacts and Mitigations

Specific mitigations need to be assessed in reference to the needs of each individual site. Some of the listed mitigations may not be sufficient to protect fishery and water quality resources. Other concerned agencies (CDFG and NCRWQCB) must be notified as to the effective implementation of such mitigations. These agencies should not only be part of the environmental review process they must participate in active on site analysis and effectiveness monitoring.

Level of significance as "Less than significant" allocated to Fishery Resources, Wetland, Wildlife, and Water Resources, after mitigation, has not been substantiated by fact or supported by logical discussion or by agency review. Table S-1 lists possible impacts in areas of concern. Significance of such potential impacts is noted as "Less Than Significant" based on strategy of either "Avoidance" or employment of BMPs. Avoidance is a good policy and should justify elimination of questionable drilling sites (noted in this document). However, all sensitive areas, erosion prone and otherwise, can not possibly be avoided. There is no way of know "Avoidance" is actually taking place unless all drainages, crossings, and sensitive areas are noted in the document. The policy of creating the route and adjusting (engineering) the right of way to fit on site conditions leaves much conclusion and operation to after the fact review and on the spot implementation which precludes CEQA and agency review. Thus, a comprehensive list of all sites, conditions, related potential impacts and mitigations, with monitoring program, must be part of the Initial Study or EIR. CDFG and NCRWQCB must submit relevant environmental review.

"Avoidance" in concept can be enhanced by using existing facility and/or laying facility in trench or tunnel where existing or proposed routes are redundant or overly; e.g. AT&T. "Avoidance" would not be trenching or drilling in wetlands or sensitive areas. Thus, alternatives such as attaching to existing bridges is environmentally superior and mandated.

Reliance on Erosion Control (P. 2-12 -14), indicates that not all sensitive areas are to be avoided. A policy of erosion prevention, plus additional "fixes" or corrections of existing conditions, would demonstrate a proactive stance in assuring compliance with overall sediment reduction goals in these impaired basins.

Monitoring of mitigations should be an ongoing project with of periodic frequency of inspections - during wet weather periods (see Mitigation Monitoring).

If other environmentally superior alternatives are not found and boring is to occur, the County of Mendocino and other review agencies (CDFG and NCRWQCB) should be notified before boring. Boring teams should be trained not to miss target and breach streams. Drilling slightly deeper may add a margin of safety.

Drilling or trenching of perennial streams where fish may be present should not begin before July 15 or later. For example, at the proposed boring site on the lower Garcia (at Highway 1 bridge) and Hathaway Creek, there is late spawning of steelhead, late June to mid July. The work window should be adjusted to accommodate this. Monitoring of mitigations should be an ongoing project with of periodic frequency of inspections - during wet weather periods (see Mitigation Monitoring).

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Trenching of Class III streams (with 12" x 48" x (up to) 1000'??), trenching and diverting some perennial streams, trenching in or adjacent to inside ditches, as well as boring under other streams indicates activity with the likelihood of failure and consequences to sensitive drainages.

Unstable area mitigation of remedial grading may not be sufficient to protect the resource. Additional mitigations, such as area stabilization, may be needed to protect fishery and water quality resources.

Mitigation to remedy sediment production capability should include consideration of sediment catch basins.

Wet weather work limitations need better definition. Operations during wet periods where erosion may occur and sediment may gain access to a watercourse must be prohibited. At present wet weather conditions are not adequately defined. Consultation with contract compliance inspector should not be criteria to shut wet weather operations down.

Monitoring of mitigations should be an ongoing project with of periodic frequency of inspections - during wet weather periods (see Mitigation Monitoring).

It is obvious, considering discussion in the initial study, that spills or failures are anticipated. There are a lot of words about contingency planning. Leaving compliance in this area up to the individual contractors is a big mistake. An independent and trained auditor is necessary to assure compliance and promptly remedy when an accident occurs. Since it is very likely there will be some accidents, the contingency plans should be reviewed for assurance of successful implementation, if need be, by the administering agencies.

It is noted (p 2-8) that "Equipment Access through streams" is proposed. Such stream crossing by heavy equipment has possible adverse consequences to salmonid redds, emerging embryos, stream siltation, and stream hydrology. Such access should be limited. Working window should be adjusted to protect water quality and fish species.

Monitoring of mitigations should be an ongoing project with of periodic frequency of inspections - during wet weather periods (see Mitigation Monitoring).

Coast Range Geology

Unstable and erosive soil conditions should be noted and discussed. Soils description and mapping are not sufficient. There is mapping of soils with descriptions and erosion indexes for western Mendocino County that are not noticed in the Initial Study. Much of the trenching and drilling will be through fractured streambed morphology. Accelerated erosion is a constant ongoing and present problem, much more so than is acknowledged in the Initial Study.

Cumulative Impacts

It is noted that there are unstable soils and geology, that there is degraded water quality, that there are listed fish species at risk, and that proposed activity poses risk to noted resources. It should also be noted that there are continuing impacts from timber production and other land uses. Quantitative instream analysis, or other scientific analysis, related to this project, in reference with other projects and their related impacts is mandated under CEQA.

As discussed above, proposed activity has severe potential of additional adverse impacts to already impaired watercourses. Under "Hydrology and Water Quality" the document states that there will be "Cumulative temporary water

quality impacts from erosion and discharges (p. 2.25)." This does not meet Basin Plan requirements. Thus, other measures are need to protect water resources. Extraordinarily careful work and mitigation employment will be needed to keep impacts to a minimum, and even then there will be additional impacts. On way to lessen the overall sediment impact is to do additional mitigation of existing sediment control or reduction along the right of way. Such corrective "fixes" will serve to reduce the overall input of pollutants from the project and existing sources as well as protecting the integrity of the installation.

As stated above the sensitivity of these drainages, continuing impacts, and the potential of further impacts from the proposed activities necessitates CEQA compliance by either the production of a full EIR or further analysis and more substantial mitigation with assurances of sedimentation reduction activity.

Hydrologic Condition

The roads and right of way of the proposed projects already are causing hydrologic interference and interception of the natural hydrology of the areas of the project. In some cases this interference has or is causing conditions of accelerated erosion. Proposed operations have propensity to alter drainage patterns and to violate water quality standards. Statement in the Initial Study is incorrect (5B-54). Proposed operations can exacerbate conditions if not mitigated properly and existing problem sites can pose threat to the integrity of the cable installation. Part of the objects of the installation policy should be to eliminate such sites as appropriate to improve drainage and potential or ongoing erosive conditions that cause threat of failure.

There is an absence of discussion of Garcia River TMDL for sediment (and other so listed waterbodies in the project area) and how proposed activity with mitigations propose to correct erosion sources, that may be aggravated, on the cable right of way. There should be included specifics related to this discussion. It is imperative that sediment reduction plans be noted in writing so that performance can be monitored. Analysis of individual stream crossings, watercourse and drainage crossings and related environmental concerns and mitigations must be part of the initial study and in many cases included in the 1603 permitting process. This analysis must be noticed and accomplished prior to project approval.

Clean Water Act and Basin Plan Responsibilities

Several drainages in the cable route right of way are listed as pollutant impaired under Section 303 (d) of the federal Clean Water Act, the state Porter-Cologne Act, and the area Basin Plan (Water Quality Control Plan). Activities proposed in this project represent both point and non-point source contributions of pollutants. NPDES and storm water runoff Permits are mandated for point source contributions. Waste Discharge Permits are needed for other construction activity.

On Rivers with TMDLs (listed under Section 303 (d)), no new increases of pollutants are allowed from point sources. State Anti-degradation Policy (Basin Plan, Chapter 3, Water Quality Objectives):

"Controllable water quality factors shall conform to the water quality objectives contained herein. When other factors result in the degradation of water quality beyond the levels or limits established herein as water quality objectives, then controllable factors shall not cause further degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from man's activities that may influence the quality of waters of the State and that may reasonably be controlled."

Also, on waterbodies with TMDLs, pollution reduction activity, either on site or off site or combination, must be demonstrated by employment of a specific pollution reduction strategy - specific plans with employment oversight. Compliance must be demonstrated in the Initial Study.

NPDES Permit - and Relevant Additional Information.

While the State of California TMDL for the Garcia and associated implementation plan has not been formally adopted by the SWRCB there is legal question as to whether new and additional discharges are allowed under the State Porter-Cologne Act, and the Federal Clean Water Act. Pollutant increases from controllable sources are not permitted. Also, given the above mentioned circumstances, NPDES permits and discharges have additional instream monitoring responsibility. This required monitoring of water quality effects is not discussed in the Initial Study Document, but must be necessarily considered in the permitting process and made part of the permit.

Analysis for an NPDES Permit should consider discussion of watershed conditions, potential effects of proposed operations, mitigations, and alternatives; as discussed in this comment letter. Permitting process should consider applicability of TMDL and Basin Plan criteria and objectives and assurance of mitigatory process success including consideration of alternatives and erosion "fixes" as part and parcel of compliance with such criteria and objectives.

Goals and objectives of the SWPPP can not be met if specific identification of source or potential sources is incomplete and/or control and reduction policy, including alternative consideration, does not give assurance of success.

Estimate of runoff coefficient and run-on calculation is soil, vegetative, and slope dependent. Sufficient information on soils and site specific conditions is not available in the document to make accurate calculations.

Best Management Practices need to be applied by site specific analysis, not extant in the document.

Drainage and wetland crossings (Table B-1, Appendix A) is incomplete. Accurate description of conditions extant at site are missing as well as description of activity and appropriate mitigation. Not all crossings or wetlands, or wet areas, are noted. Also, missing is a description of potential erosion problems. Such tables and appendix indicate that avoidance is in fact impossible to employ as a generalized mitigation as it is unclear where avoidance is actually occurring or not.

Erosion Control Devices and Practices need to be linked with site specific activity, description of actual conditions and mitigatory process.

Training should include familiarity with Farm and Ranch Roads book.

Since the NPDES or SWPPP is an implementing program for meeting Basin Plan Objectives than:

Porter-Cologne Act, §13242 Implementing Program. The program of implementation for achieving water quality objectives shall include, but not be limited to:

- a) A description of the nature of the actions which are necessary to achieve the objectives, including recommendation for appropriate action by any entity, public or private.
- b) A time schedule for actions to be taken
- c) A description of surveillance to be undertaken to determine compliance

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with objectives.

Mitigation Monitoring

The Flow Chart, Figure 2-6, indicates the number persons involved in implementation oversight is small relative to the size of the project. As part of project implementation (Environmental Training and Awareness) it is suggested that the Handbook for Farm and Ranch Roads, by Danny Hagans and Bill Weaver (available and the Mendocino County Resource Conservation District), be consulted, used in your proposed educational process, and made part of the Initial Study.

It appears that implementation monitoring, for the protection of the beneficial uses of water, is to be done by individuals hired by the contractors. Such a relationship is a direct conflict of interest and will not provide reasonable assurance of compliance. Due to the sensitivity of the resource and the apparent likelihood of implementation failure, independent parties (trained in watershed assessment and implementation strategy), should be employed to ensure appropriate employment of all mitigations in this process and be present during activity at sensitive locations.

As stated above, a sufficient and ongoing mitigation monitoring process, that is inclusive of review agency notification and participation, is not part of the current project. As stated in Mendocino County Policy 3.1-11 requires the inclusion of performance standards in the Coastal Zoning Ordinance for mitigation of impacts from development that might affect runoff, sedimentation, biochemical degradation, increased stream temperatures, and loss of shade along streams and in addition to the mitigation measures specified in the Initial Study. It is recommended to require that copies of the post-construction restoration reports (by independent auditor) be submitted to the Planning and Building Services Department and other responsible managing agency for fishery and water quality issues) that such conditions and monitoring and reports must be also evaluated and noticed to the reviewing agencies (CDFG and NCRWQCB) as compliance reporting and these mitigations, in and of themselves, do not necessarily meet all legal requirements.

Wildlife

Bird species of concern extant along the right of way have not been afforded survey by use of appropriate protocol.

Recommendation(s)

My recommendation is that the right of way should be surveyed for ongoing problems linked with the cable installation. Corrective action should take place at sites posing erosion problems. A maintenance plan needs to be developed to assure that erosion standards understood by maintenance crews, periodic assessment of conditions occurs with maintenance, and that cobble will not be added to inboard ditches so as to pose a hazard of diverting water onto the road.

Without such survey or corrective activity this project as proposed, in addition to past activity, poses threat to adversely impact the Garcia River and cause degradation to the beneficial uses of waters of the Garcia River. Thus, an environmental Impact Report would be required to assess past and current impacts and develop a mitigation and monitoring plan.

Responsible agencies, NCRWQCB and CDFG, should part in the field review and assessment of current conditions along the right of way of this project and supply assessment report with recommendations to the file.

Notice:

10/08/2000

45 p 47

Mendocino County General Plan is internally inconsistent due to lack of mandated Grading Ordinance with Riparian Protection Element. This projects proposes grading, soil movement, and operations in the riparian zones. Prior to approval of such projects General Plan and Local Coastal Plans must be consistent.

Please be Aware - CEQA Compliance, Cumulative Impacts, Findings

CEQA responsibility sent on separate cover - preceding document.

Sincerely,

Background Information

Background information on existing conditions of the Garcia River should be part of any assessment and analysis. Such information can be found in the following documents to be found at Mendocino County Planning and Building Services, or the North Coast Regional Water Quality Control Board:

Garcia River Watershed Enhancement Plan, Mendocino County Resource Conservation District, October 1992

Garcia River Watershed Water Quality Attainment Strategy for Sediment, North Coast Regional Water Quality Control Board, 1998

Assessment of Aquatic Conditions in the Garcia River Watershed - Including Appendices 1-20, Northcoast Regional Water Quality Control Board, 1997

The Garcia River Watershed Assessment and Instream Monitoring Plan, Compiled by Forest, Soil & Water, Inc., O'Conner Environmental, Inc., and East West Forestry, Fred Euphrat, 1997

Garcia River - TMDL for Sediment, U.S. EPA, 1998

Mendocino County Soils Survey, U.D.A., with associated mapping and definitions.

Sincerely,

Mr. Scott Gergus
Associate Engineering Geologist
Regional Water Quality Control Board -
North Coast Region 5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

Department of Planning and Building Services
County of Mendocino
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California Department of Fish & Game
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National Marine Fisheries Service

10/08/2000

46947

U.S. Fish and Wildlife Service

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10/08/2000

47447

TO: California Coastal Commission
FROM: Coastal Residents' Coalition
RE: Appeal No. A - 1 - MEN - 00 - 043
10/17/00

The Herman H. Fitzgerald letter referred to in the above appeal was submitted to the Mendocino County Planning Commission to be read 7/20/00 during case No. CDU 5-2000, Coastal Development Use Permit application for Williams Communications Fiber Optic.

The letter was not read as it had been misplaced in a wrong folder. Thus the Planning Commission voted on this permit without hearing the letter.

The letter was found after the Williams Use Permit hearing was closed, so votes could not be changed. It was read during the following agenda item which had nothing to do with Williams.

Planning Commissioner Don Lipmanson and Supervisors Colfax and Schoemaker are sending the Commission letters of support to our appeal.

Hearsay has it that ranchers and property owners who are accepting payoffs from Williams are being requested to sign a letter promising not to speak or appear at Coastal Commission hearings. Am trying to obtain a copy of this letter for the CCC.



Nory Nisbet

RECEIVED

OCT 23 2000

CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO.	7
APPLICATION NO.	A-1-MEN-00-043
APPELLANT'S CORRESPONDENCE	

LAW OFFICES
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HOWARD D. COLEMAN
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RECEIVED
OCT 11 2000
CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO.	8
APPLICATION NO.	A-1-MEN-00-043
APPLICANT'S CORRESPONDENCE	
(page 1 of 13)	

LOS ANGELES, CALIF. 90003
(202) 783-7272

SACRAMENTO
SUITE 1000
915 L STREET
SACRAMENTO, CA 95814-3701
(916) 442-8888

October 5, 2000

REFER TO FILE NUMBER

270367 - 0002

VIA FACSIMILE

Mr. Robert Merrill
California Coastal Commission
North Coast District Office
710 E Street, Suite 200
Eureka, California

Re: Commission Appeal No. A-1-MEN-00-043 – Williams
Communications, Inc.

Dear Mr. Merrill:

We represent Williams Communications, Inc. ("Williams"), the applicant on the coastal development permit which is the subject of this appeal. The purpose of this letter is to serve as Williams' response to the above-described appeal filed by the Coastal Residents Coalition ("Appellant") on September 15, 2000. The basis of the appeal of the approved permit for Williams' application for its fiber optic conduit system (the "Project") is that an Environmental Impact Report, rather than the approved Mitigated Negative Declaration, should have been issued for Williams due to environmental concerns.

The appeal filed herein is without merit since it does not meet the threshold criteria to even invoke the appeal process under Section 30603 of the California Coastal Act (the "Act") and Section 13113 of the California Code of Regulations (the "Code"). Section 13113 of the Code states that the grounds for appeal for any development appealable under Section 30603(a) of the Act shall be limited to those specified in Sections 30603(b) and (c) of the Act. The grounds for appeal allowed by these sections are limited to the following: (1) that the development does not conform to the standards set forth in the certified local coastal program; or (2) that the

California Coastal Commission

October 5, 2000

Page 2

development does not conform to the public access policies. Appellant has articulated neither ground for appeal and therefore, has not filed a meritorious appeal in accordance with the law.

Appellant alleges, by reference to public access and uncertainties of development, that the Project is not in conformity with Section 3.9 of the Local Coastal Program for Mendocino County (the "LCP"); however, the appeal only cites CEQA issues in their discussion of such alleged inconsistency. Section 3.9 of the LCP mandates three concepts for new development, all of which the Project conforms with: (1) concentrate development; (2) avoidance of adverse cumulative impacts on coastal resources; and (3) maintenance and enhancement of public access to the coast.

The Project is concentrated by design so that it will be constructed entirely within existing road right-of-ways, and its cable system will be attached to bridges, where available, or installed underground via directional boring. The Project was specifically designed to avoid disturbance of environmentally sensitive resources and minimize potential impacts. The Project has erosion control measures and spill prevention with countermeasures to protect water quality during construction. All sensitive resources will be identified during field studies, and staked and flagged in the field and marked on construction drawings before the commencement of any construction. No construction equipment will be operated in sensitive streams. Construction activities for the Project will be scheduled so as to avoid interference with the reproductive cycles of sensitive plant and animal species and periods when the soil is too wet to support construction equipment. A reclamation plan has been developed to identify areas that will be restored and the methods that will be used, including seed mixes, schedules, success criteria, and success monitoring. All environmental issues for the Project are being mitigated to a less than significant level as approved in the CEQA process (the approved Mitigated Negative Declaration). Thus, the Project will be constructed in areas already subject to prior use since the Project is able to integrate itself with existing uses.

The Project will not negatively effect public access and is in conformance with public access policies. The Project provides for a traffic control plan for the installation activities within public road and highway rights-of-way, which will be developed in coordination with affected jurisdictions to reduce construction-related effects on traffic and circulation patterns. As a condition of approval, Williams is also required to post a bond or proof of insurance for the repair or replacement of any accidental damage that may occur as a result of the Project. Williams has further agreed, as a condition of approval, to leave any county road upon which work is done

California Coastal Commission

October 5, 2000

Page 3

for the Project in better or equal condition than the previously existing condition of the county road. Thus, existing access will not be impaired.

After a lengthy public hearing of approximately five hours on July 20, 2000, the Mendocino County Planning Commission approved Williams' application for a coastal development permit in this matter on a vote of 4 to 1. In their approval of the permit, the Planning Commission added 18 conditions of approval to address and safeguard the concerns raised at the public hearing. The adopted findings of the Planning Commission's approval of the permit specifically state that the Project is in conformity with the local coastal program; it will be provided with adequate utilities, access roads, drainage and other necessary facilities; it is consistent with the purpose and intent of the zoning districts applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning districts; and public services such as solid waste and public roadway capacity are adequate to serve the proposed development.

Pursuant to CEQA, the California Public Utilities Commission (the "CPUC") served as the lead agency for the Project and approved a Mitigated Negative Declaration. The Mitigated Negative Declaration that was submitted by Williams for the Project was extensive and extremely detailed, with the documents extending through four bound volumes. The CPUC extended the public review process for the Project from 30 to 60 days and then took another 30 days to issue its approval of the Mitigated Negative Declaration on June 10, 2000. Accordingly, the Project was closely scrutinized by both the public and the CPUC before the Mitigated Negative Declaration was approved. The 30 day appeal period has passed for CEQA related issues. Conditions of approval were subsequently added to the Planning Commission's approval of the Project as a result of testimony heard regarding problems with previous fiber construction.

Appellants appeal focuses strictly upon CEQA issues and related environmental issues governed by CEQA. In fact, the appeal specifically attacks statements made in the Mitigated Negative Declaration approved by the CPUC on June 10, 2000. The CEQA issues Appellant raises are entirely irrelevant to the narrow grounds for appeal allowed for the subject appeal. The Code clearly states that the grounds for appeal shall be "limited" to those listed in Sections 30603(b) and (c) of the Act. Accordingly, this appeal should be denied since Appellants have failed to raise a necessary ground for appeal. Please note that the time for appeal for CEQA issues has expired, and Appellants' attempt to appeal the CEQA issues in this forum is not in accordance with the law.

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

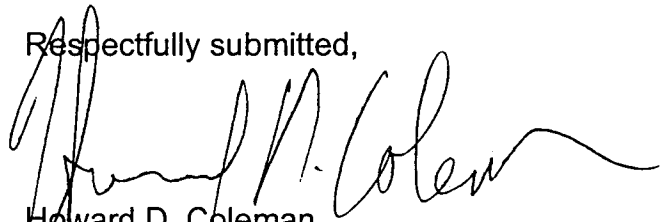
California Coastal Commission

October 5, 2000

Page 4

In conclusion, the grounds for appeal do not come within the limitations of the Act and its implementing regulations, and thus, are without merit. To the extent the appeal touches on LCP issues, the Project stands in compliance with the LCP and the Act's access policies. There is no substantive issue raised by the appeal.

Respectfully submitted,



Howard D. Coleman
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

HDC/dsp

cc: Peter Douglas
William Bagley, Esq.

4 of 13

LAW OFFICES

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

WALTER L. NOSSAMAN
(1988-1994)

WILLIAM E. GUTHNER, JR.
(1932-1999)

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(916) 442-8888

October 24, 2000

REFER TO FILE NUMBER

270367 - 0002

VIA FACSIMILE AND FIRST-CLASS MAIL

Susan Sniado
California Coastal Commission
170 E Street, Suite 200
Eureka, California 95501-1865

RECEIVED
OCT 24 2000
CALIFORNIA
COASTAL COMMISSION

Re: Commission Appeal No. A-1-MEN-00-043 -
Williams Communications, Inc.

Dear Ms. Sniado:

We represent Williams Communications, Inc. ("Williams"), the applicant on the coastal development permit which is the subject of this appeal. As a follow-up to our conversation yesterday, I would like to take the opportunity to address the issues of wetlands permits and stream crossings with respect to Williams' application for its fiber optic conduit system (the "Project"). We understand from conversations with Commission Staff that there may be concern as to these issues, even though these issues are not raised in the appeal.

The wetlands mapping for the Project has already been completed and Williams currently has the necessary wetlands permits for the Project. Williams received 4 "1601 Lake and Streambed Alteration Permits" from the Department of Fish and Game, Notification Numbers R3-2000-0877; 0879; 0880; and 0881 for the culvert crossings and bridge attachments proposed in the Project. Williams has also received "401 Water Quality Certifications" from the State Water Resources Control Board for the Point Arena to Sacramento Fiber Optics Line and the Point Arena to Robbins Fiber Optics Line of the Project. A "402 Permit" has been issued by the SWPPP for the Project and a "404 Permit" is in effect for the Project pursuant to no action by the Army Corps of Engineers after timely notification and follow-up by Williams.

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

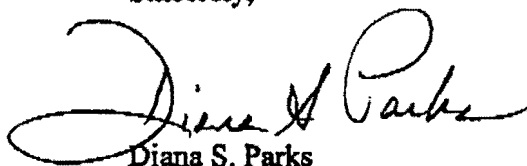
Susan Sniado
October 24, 2000
Page 2

The Project consists of 4 river crossings within the Coastal Zone, each of which will be accomplished by attachment to bridges rather than below the riverbed. These river crossings are shown on the attached map and are depicted as (1) Brush Creek Bridge Attachment; (2) Garcia River Bridge Attachment; (3) Garcia River Overflow Bridge Attachment; and (4) Gasker Slough Bridge Attachment. Williams has received an "Encroachment Permit Rider" from the California Department of Transportation for each of these bridge attachments. Permit Rider No. 0199-6-UK-0478 is attached hereto for your information and review in regard to the river crossings of the Project.

The wetlands mapping and permitting has already been addressed and completed for the Project by Williams, and is not an unresolved issue. As discussed above, the necessary riders to attach the Project's lines to bridges over stream and river crossings are already in place and allow Williams to complete the entire Project without going beneath a riverbed. The fact that Williams now holds the required permits and riders hopefully eliminates the uncertainties of having prior review of these.

We are hopeful that this information is helpful in clarifying any questions or concerns the Commission Staff or Commissioners may have in regard to wetlands mapping and stream crossings for the Project. Please call me if you have any questions or comments in regard to this matter.

Sincerely,



Diana S. Parks

for NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

DSP

cc: Jesse Lee
Bill Pfanner
Nancy Lucast

6 of 13

BROWN CREEK BRIDGE ATTACHMENT
HWY 1 MENDOCINO COUNTY
MP 21.00 BOTH SIDES WILL BE
ATTACHED TO.

Lagoon Creek

Lagoon Creek

GARCIA RIVER BRIDGE ATTACHMENT
HIGHWAY 1 MENDOCINO COUNTY
MP 18.56

GARCIA RIVER OVERFLOW BRIDGE ATTACHMENT
HIGHWAY 1 MENDOCINO COUNTY
MP 18.05

Garcia River

Garcia River

Manchester Park Area

GREYER SLOUGH BRIDGE
ATTACHMENT NATHANAY CREEK
HWY 1 MENDOCINO COUNTY
MP 17.67

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

ENGROACHMENT PERMIT RIDER

TN-0122 (REV. 5/82)

Collected By DISTRICT CASHIER	Permit No. 0100-S-RW-0121
Rider Fee Paid \$490.00	Dist/Cash/Paid 1-MEN-VAR-VAR
Date 8/3/00	Rider Number 0100-S-RW-0331

PERMIT EXPIRES
DECEMBER 31, 2000

TO:

WILLIAMS COMMUNICATION, INC.
418 AVIATION BLVD.
SANTA ROSA, CA 95403

ATTN: JESS LEE
PHONE: 805.748.7631

, PERMITTEE

In compliance with (your) request of JUNE 22, 2000 we are hereby amending the above numbered encroachment permit as follows:

Date of completion extended to: **NO CHANGE**

ALLOW PERMITTEE TO ATTACH FIBER OPTIC CABLE TO THE FOLLOWING CALTRANS STRUCTURES:

- I. **BRUSH CREEK BRIDGE (BR. # 10-115) POST MILE 20.83 OF STATE ROUTE 1-MEN-1**
1. Concrete anchors /fasteners used for attaching to bridges shall be from the attached list of approved fasteners obtained from Caltrans Office of Structures Maintenance and Investigations.
2. The Permittee shall submit two sets of full sized vellum/paper as-built plans after the work is completed. As-built plans shall include but are not limited to the following changes: (1) Dimensions from the end/beginning of bridge to expansion joints shall be provided. (2) Hanger spacing dimensions shall be provided (3) The work for Brush Creek Bridge shall be provided on one plan sheet with the North arrow pointed in the proper direction for future reference. (3) The Permittee's Engineer shall designate the type of fastener on the Plans by size, manufacturers name and model name or number. Field substitutions must be submitted to Caltrans for approval 2 weeks prior to installation and shall not be used until authorized by Caltrans.
4. All hardware for bridge attachment shall be cut, drilled and welded prior to hot dip galvanizing. All field cuts/ bores must be galvanized. All field cuts / bores must be regalvanized prior to installation.
5. Holes in concrete from removed brackets shall be patched as per the Current Caltrans Standard Specifications to the satisfaction of the Caltrans Permit Inspector.

Except as amended, all other terms and provisions of the original permit shall remain in effect.

TOM PITTMAN
GW SHELDON
JP CARSON
JC MAAS

EN BUCHIGNANI
SW BOWLES KD PETSCH
TIM ASH
MIC RESTAINO
RAMON HOLE-OSTRICH
FILE

REM
WRITTEN BY: JA PENA

APPROVED:

RICK KNAPP, District Director

BY:

Royal B. McCarty, P. E., District Permit Engineer

PERMITTEE: WILLIAMS COMMUNICATION, INC.

PERMIT #: 0100-6-RW-0331

August 4, 2000

6. The Permittee shall insure that the Contractor provides certification to Caltrans for the following:
 - a) That all custom made metal components for bridge attachment meet the Plans and Specifications approved by Caltrans.
 - b) That welding meets the requirements of Section 55 of the Caltrans Standard Specifications.
 - c) That galvanizing meets the requirements of Section 75 of the Caltrans Standard Specifications.
7. A Pacometer shall be used to locate steel reinforcement in structure concrete before drilling. Brackets shall be placed in a location that does not damage steel reinforcement.
8. A non-percussive rotary drill shall be used to drill holes in concrete.
9. The conduit shall be placed on the interior of the girders unless another location is approved by Harold Herr, Branch Chief, Division of Structures Maintenance and Investigations (916) 227-8277. Conduit placed on the exterior of a bridge shall be placed behind a Caltrans approved shield that appears aesthetically to be an integral part of the bridge and is the same color as the bridge.

II. ANDERSON CREEK BRIDGE (BR.# 10-225) POST MILE 0.57 OF STATE ROUTE 1-MEN-253

1. The Permittee shall two sets of full size vellum/paper as built plans after the work is completed. As built plans shall include but are not limited to the following changes: (1) The Permittee's Engineer shall designate the type of fastener on the Plans by size, manufacturers name and model name or number. Field substitutions must be submitted to Caltrans for approval 2 weeks prior to installation and shall not be used until authorized by Caltrans.
1. The conduit shall not be placed on the right exterior girder of the bridge. The conduit shall be reduced from a 250 mm (10") diameter conduit to a 200 mm (8") diameter conduit and placed behind the right girder after coring a 250 mm (10") hole through the abutments and bent caps in accordance with the following provisions:
 - a) A non-destructive means shall be used to locate shear reinforcement in the bent caps to prevent cutting by coring operations.
 - b) There must be a capacity for lateral movement for seismic deflection at the first two conduit supports from abutment 4 (lateral movement is not required near abutment 1).
 - c). Concrete anchors /fasteners used for attaching to bridges shall be from the attached list of approved fasteners. Concrete anchors must be on the attached approved list.
 - d) A non-percussive rotary drill shall be used to drill holes in concrete. Impact drills are prohibited.
 - e) If reinforcing steel is encountered while installing holes for anchors the hole shall be abandoned and a new hole installed.
 - f) Abandoned holes shall be patched with mortar matching the color of the adjacent concrete.
 - g) Holes in concrete from removed brackets shall be patched as per the Current Caltrans Standard Specifications to the satisfaction of the Caltrans Permit Inspector.
 - h) The Permittee shall insure that the Contractor provides certification to Caltrans for the following:
 - i) That all custom made metal components for bridge attachment meet the Plans and Specifications approved by Caltrans.
 - j) That welding meets the requirements of Section 55 of the Caltrans Standard Specifications.
 - k) That galvanizing meets the requirements of Section 75 of the Caltrans Standard Specifications.
 - l) A Pacometer shall be used to locate steel reinforcement in structure concrete before drilling. Brackets shall be placed in a location that does not damage steel reinforcement.

9 of 13

PERMITTEE: WILLIAMS COMMUNICATION, INC.
PERMIT #: 0100-6-RW-0331
August 3, 2000

III. GENERAL REQUIREMENTS

1. All work should be completed between August 2, 2000 and February 28, 2001 to avoid nesting swallows and to minimize impacts to migratory birds.




FROM :

FAX NO. :

Jul. 11 2000 01:05PM P3

**TABLE 3. REFERENCE CHART FOR APPROVED
RESIN CAPSULE ANCHORS**

11-20-07

ITEM	NOMINAL STUD/BOLT DIAMETER	MANUFACTURER	
		HILTI HVA SYSTEM	
		MALE STUD TYPE	FEMALE INSERT TYPE
ADHESIVE CAPSULE	3/8 inch	 HEA 3/8" x 3-1/2" Item No : 000000058	HEA 3/8" x 3-1/2" Item No : 000000058
	1/2 inch	HEA 1/2" x 4-1/4" Item No : 000000040	HEA 1/2" x 4-1/4" Item No : 000000040
	5/8 inch	HEA 5/8" x 5" Item No : 000000053	HEA 5/8" x 5" Item No : 000000053
	3/4 inch	HEA 3/4" x 6-5/8" Item No : 000000129	HEA 3/4" x 6-5/8" Item No : 000000129
ANCHOR ASSEMBLY	3/8 inch	 HAS 38 - 515 Item No : 000000647 3/8"-10UNC x 5-1/2"	 HFA 3/8" X 3-1/2" Item No : 000000640
	1/2 inch	HAS 12 - 512 Item No : 000000675 1/2"-13UNC x 5-1/2"	HFA 1/2" X 4-1/4" Item No : 000000678
	5/8 inch	HAS 38 - 738 Item No : 000000683 5/8"-11UNC x 7-5/8"	HFA 5/8" X 5" Item No : 000000686
	3/4 inch	HAS 34 - 888 Item No : 000000681 3/4"-10UNC x 9-5/8"	HFA 3/4" X 6-5/8" Item No : 000000684
HOLE DIMENSIONS	3/8 inch	Drill bit diameter : 15/32" Embedment Depth : 3-1/2"	Drill bit diameter : 3/8" Embedment Depth : 3-1/2"
	1/2 inch	Drill bit diameter : 9/16" Embedment Depth : 4-1/4"	Drill bit diameter : 11/16" Embedment Depth : 4-1/4"
	5/8 inch	Drill bit diameter : 11/16" Embedment Depth : 5"	Drill bit diameter : 1" Embedment Depth : 5"
	3/4 inch	Drill bit diameter : 7/8" Embedment Depth : 6-5/8"	Drill bit diameter : 1-1/8" Embedment Depth : 6-5/8"

EFFECT OF TEMPERATURE ON CURE TIME

Ambient temperature	Minimum curing time
68°F +	20 minutes
50°F to 68°F	30 minutes
32°F to 50°F	1 hour
23°F to 32°F	5 hours

- Notes :**
- Resin capsule anchors are not recommended for 1) vertical walls (horizontal holes) or overhead applications where fire is a hazard or 2) under water or where holes contain free water.
 - Standard stud assemblies listed above are ASTM A307 steel, are electroplated with zinc, and are not suitable for use in a corrosive environment.
 - Hot-dip galvanized, stainless steel, and high-strength stud assemblies may be special ordered from the above manufacturers, and generally require at least 4 weeks for delivery.
 - Hilti anchor assemblies shown above include a "V"-pointed anchor.
 - Stud assemblies are furnished with a nut and washer.
 - Threads in HFA inserts must be tapped oversize to accept a hot-dip galvanized stud or cap screw.

11413

FROM:

FRX NO. :

Jul. 11 2000 01:06PM P4

TABLE 2. REFERENCE CHART FOR APPROVED
STUD MECHANICAL EXPANSION ANCHORS

11-20-97

Category	STUD MECHANICAL EXPANSION ANCHORS				
	WEDGE		EXTERNAL PLUG		
Type					
Stud Diameter	1/4 inch	1/2 inch	3/4 inch	1 inch	1 1/2 inch
Manufacturer					
RAWLPLUG	NAME: Stud-Bolt MODEL: 7100; 3/4" x 1-1/2" MIN HOLE DEPTH: 1-1/2" DRILL BIT DIA: 3/4" DRILL BIT TIP TOLERANCE: CLEANUP (min) (max) INSTALLATION TORQUE: 80 ft-lbs	NAME: Stud-Bolt MODEL: 7100; 1/2" x 1-1/2" MIN HOLE DEPTH: 1-1/2" DRILL BIT DIA: 1/2" DRILL BIT TIP TOLERANCE: CLEANUP (min) (max) INSTALLATION TORQUE: 80 ft-lbs	NAME: Stud-Bolt MODEL: 7100; 3/4" x 1-1/2" MIN HOLE DEPTH: 1-1/2" DRILL BIT DIA: 3/4" DRILL BIT TIP TOLERANCE: CLEANUP (min) (max) INSTALLATION TORQUE: 125 ft-lbs	NAME: Stud-Bolt MODEL: 7100; 1" x 1-1/2" MIN HOLE DEPTH: 1-1/2" DRILL BIT DIA: 1" DRILL BIT TIP TOLERANCE: CLEANUP (min) (max) INSTALLATION TORQUE: 125 ft-lbs	NAME: Stud-Bolt MODEL: 7100; 1 1/2" x 1-1/2" MIN HOLE DEPTH: 1-1/2" DRILL BIT DIA: 1 1/2" DRILL BIT TIP TOLERANCE: CLEANUP (min) (max) INSTALLATION TORQUE: 125 ft-lbs
	NAME: Wedge-type Stud Bolt MODEL: 2315-1000 NOT APPROVED	NAME: Wedge-type Stud Bolt MODEL: 2315-1000 NOT APPROVED	NAME: Wedge-type Stud Bolt MODEL: 2315-1000 NOT APPROVED	NAME: Stud-Bolt Anchor MODEL: 2315-1000 NOT APPROVED	NAME: Stud-Bolt Anchor MODEL: 2315-1000 NOT APPROVED
STAR	NAME: Stud-Bolt MODEL: 7100; 1/4" x 1-1/2" MIN HOLE DEPTH: 1-1/2" DRILL BIT DIA: 1/4" DRILL BIT TIP TOLERANCE: CLEANUP (min) (max) INSTALLATION TORQUE: 80 ft-lbs	NAME: Stud-Bolt MODEL: 7100; 1/2" x 1-1/2" MIN HOLE DEPTH: 1-1/2" DRILL BIT DIA: 1/2" DRILL BIT TIP TOLERANCE: CLEANUP (min) (max) INSTALLATION TORQUE: 80 ft-lbs	NAME: Stud-Bolt MODEL: 7100; 3/4" x 1-1/2" MIN HOLE DEPTH: 1-1/2" DRILL BIT DIA: 3/4" DRILL BIT TIP TOLERANCE: CLEANUP (min) (max) INSTALLATION TORQUE: 125 ft-lbs	NAME: Stud-Bolt Anchor MODEL: 2315-1000 NOT APPROVED	NAME: Stud-Bolt Anchor MODEL: 2315-1000 NOT APPROVED
	NAME: Wedge-type Stud Bolt MODEL: 2315-1000 NOT APPROVED	NAME: Wedge-type Stud Bolt MODEL: 2315-1000 NOT APPROVED	NAME: Wedge-type Stud Bolt MODEL: 2315-1000 NOT APPROVED	NAME: Stud-Bolt Anchor MODEL: 2315-1000 NOT APPROVED	NAME: Stud-Bolt Anchor MODEL: 2315-1000 NOT APPROVED
ITW RAMSET/ RED HEAD	NAME: Stud-Bolt MODEL: 7100; 1/4" x 1-1/2" MIN HOLE DEPTH: 1-1/2" DRILL BIT DIA: 1/4" DRILL BIT TIP TOLERANCE: CLEANUP (min) (max) INSTALLATION TORQUE: 80 ft-lbs	NAME: Stud-Bolt MODEL: 7100; 1/2" x 1-1/2" MIN HOLE DEPTH: 1-1/2" DRILL BIT DIA: 1/2" DRILL BIT TIP TOLERANCE: CLEANUP (min) (max) INSTALLATION TORQUE: 80 ft-lbs	NAME: Stud-Bolt MODEL: 7100; 3/4" x 1-1/2" MIN HOLE DEPTH: 1-1/2" DRILL BIT DIA: 3/4" DRILL BIT TIP TOLERANCE: CLEANUP (min) (max) INSTALLATION TORQUE: 125 ft-lbs	NAME: Stud-Bolt Anchor MODEL: 2315-1000 NOT APPROVED	NAME: Stud-Bolt Anchor MODEL: 2315-1000 NOT APPROVED
	NAME: Wedge-type Stud Bolt MODEL: 2315-1000 NOT APPROVED	NAME: Wedge-type Stud Bolt MODEL: 2315-1000 NOT APPROVED	NAME: Wedge-type Stud Bolt MODEL: 2315-1000 NOT APPROVED	NAME: Stud-Bolt Anchor MODEL: 2315-1000 NOT APPROVED	NAME: Stud-Bolt Anchor MODEL: 2315-1000 NOT APPROVED

Notes:

- Approved stud anchors shown above were creep tested per California Test No. 681 (California Standard Specifications, Section 75-1.03).
- Basic installation details are listed for approved anchors.
- Anchor lengths shown are the minimum acceptable - use of longer lengths is acceptable without testing.
- * Installation Tool: 3085-00700 required for this 1/2-inch-diameter anchor.
- Stud anchors shown above are electroplated with zinc, are not suitable in a corrosive environment, and are generally furnished with a nut and washer.

Donald L. Lipmanson

Attorney at Law

Phone/Fax (707) 895-3041
e-mail: dlipman@mcn.org

EXHIBIT NO. 9

APPLICATION NO.
A-1-MEN-00-043

OTHER
CORRESPONDENCE

(page 1 of 2)

RECEIVE

OCT 20 2000

CALIFORNIA
COASTAL COMMISSION

October 17, 2000

California Coastal Commission
North Coast District Office
710 E Street, Suite 200
Eureka, CA 95501

Re: Appeal of Project # A1MEN00043 (Williams Communications)

Dear Madame or Sir:

As the sole Mendocino County planning commissioner to have voted against the granting of a Coastal Development Use Permit for this project during the planning commission's meeting of July 20, 2000, I urge you to deny this project pending completion of an EIR.

As I stated at that meeting, the project proposal appears to violate CEQA, insofar as it failed to give substantial consideration to the "no project" alternative and does not give any assurances of adequately protecting fragile wetlands and riparian areas in the coastal zone. Mere expression of the intent to use horizontal boring where wetlands cannot be avoided does not represent adequate mitigation, especially where previous horizontal boring has produced serious bentonite spills in Point Arena Mountain Beaver habitat, and where the location of such wetlands is not spelled out in any detailed mapping.

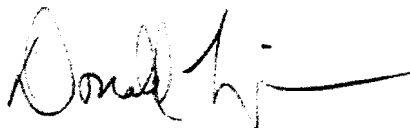
Moreover, Mendocino County planning commissioners approved this project without having been informed of two critically important letters that detailed the project's non-compliance with CEQA. We did not learn of a letter dated September 17, 1999, from Deputy Attorney General Raissa Lerner to John Boccio, Project Manager of the CPUC and to DeLicia Wynn of the State Clearinghouse, which called for an EIR rather than just a Mitigated Negative Declaration. Nor did staff timely inform us of a letter, dated July 12, 2000 to the planning commission from attorney Herman Fitzgerald, which highlighted the project's non-compliance with CEQA and also demanded an EIR.

Finally, I have received numerous complaints and experienced first-hand the impacts of similar projects in my district over the past few months. Everyone who goes to and from the coast on any weekday will experience significant delays due to traffic being stopped by trenching operations, which create substantial socio-economic costs. Air pollution arising from those stoppages, and from the incredible number of trucks involved in moving soil and concrete, is visible to the naked eye. The risk of vehicular accidents has increased; I was almost hit by a Parnum Paving truck along a narrow stretch on Mountain View Road. None of these real and generally measurable impacts has received any attention in the project description furnished by the applicant, as required by CEQA.

For these reasons, I strongly urge you to deny this project pending preparation of an EIR that thoroughly explores each of these issues.

Although I will not be available from October 21 until November 14, I am more than willing to provide you with further information upon request.

Yours truly,

A handwritten signature in dark ink, appearing to read "Donald Lipmanson", with a long horizontal flourish extending to the right.

DONALD LIPMANSON

DLL/jl