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Date: November 30, 2017

To: Coastal Commissioners and Interested Persons

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Subject: **Notice of Impending Development No. NCC-NOID-0004-17 (Utility Pole Relocation)** for Public Hearing and Commission Action at the December 13, 2017 Commission Meeting in Dana Point

SUMMARY OF STAFF RECOMMENDATION

California Department of Transportation (Caltrans) is requesting review of Notice of Impending Development No. NCC-NOID-0004-17 to replace and relocate one utility pole and install one new stub pole along the west side of Interstate 5 (I-5), replace and relocate one utility pole along the east side of I-5, and re-string utility lines on both sides of the I-5 highway between Birmingham Drive and Manchester Avenue in the City of Encinitas. Construction will occur outside of the bird nesting season and will take approximately six weeks to complete. The project is part of Phase 1 of the I-5 North Coast Corridor Project and is necessary to enable a future highway expansion.

The subject development is part of the development authorized by the certified North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program (NCC PWP/TREP), a comprehensive program of transportation, community, and resource enhancement projects within what is referred to as the "North Coast Corridor," which extends from La Jolla to Oceanside along the North San Diego County coastline. More specifically, the NCC PWP/TREP includes widening of I-5 to accommodate four high occupancy vehicle lanes, double tracking of the Los Angeles – San Diego – San Luis Obispo (LOSSAN) rail corridor, enhanced coastal bus and bus rapid transit service, a new 27 mile North Coast Corridor Bikeway that will provide non-motorized connectivity through the corridor, completion of 7 miles of the Coastal Rail Trail, other shorter connections to existing trail networks and transit stations, and resource enhancement projects (e.g., San Elijo Lagoon Restoration Project) to mitigate for impacts arising from some of these transportation projects. Jointly prepared by Caltrans and the San Diego Association of Governments (SANDAG), the NCC PWP/TREP was approved by the Commission on August 13, 2014 (PWP-6-NCC-13-0203-1), and has been amended twice since

then (PWP-6-NCC-16-0001-1 and PWP-6-NCC-16-0006-2). The standard of review for the Commission's review of the NOID is conformity with the certified NCC PWP/TREP, including the policies, design/development strategies, and implementation measures identified therein.

The subject NOID was submitted by Caltrans in preliminary form on October 24, 2017, and, after submittal of additional materials, was filed as complete on November 13, 2017. The date by which the Commission must take action on the NOID is December 27, 2017.

Two construction access routes from the east side of the highway will temporarily impact a total of 200 square feet of coastal sage scrub and southern maritime chaparral. Caltrans proposes to avoid permanent impacts to these two environmentally sensitive habitat areas (ESHAs) by crushing the vegetation during construction instead of removing it, and by re-seeding the disturbed areas with upland native species from the approved NCC PWP/TREP seed list. The installation of two guy wires to anchor the new utility pole on the east side of the highway will permanently impact two square feet of coastal sage scrub; however, this habitat disturbance is anticipated and authorized by the NCC PWP/TREP. In its initial review and approval of the NCC PWP/TREP, the Commission recognized that impacts to ESHAs caused by transportation improvements and associated development were inconsistent with multiple policies of the Coastal Act and presented a conflict; however, within the larger context of the suite of regional improvements contained within the NCC PWP/TREP, the Commission found that approval of the plan was, on balance, most protective of significant coastal resources.

Pursuant to the NCC PWP/TREP's Resource Enhancement and Mitigation Program (REMP), Caltrans proposes to mitigate this permanent impact through habitat establishment and restoration activities that have already been initiated at the Hallmark East Mitigation Site, which currently has a credit balance of 0.40 acres of upland habitat available to mitigate impacts to upland habitat in other areas. Thus, the impacts to coastal sage scrub associated with the NOID will be mitigated off-site at a 1:1 ratio because there will be no temporal loss of habitat area.

Therefore, staff recommends that the Commission determine that the impending development is consistent with the certified NCC PWP/TREP, as submitted. The development is consistent with all policies, design/development strategies, and implementation measures of the NCC PWP/TREP. The motion and resolution to implement the staff recommendation are on page 6 of this report.

ADDITIONAL INFORMATION

Further information on the subject NOID may be obtained from Zach Rehm at (562) 590-5071.

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I. PROCEDURAL ISSUES

PUBLIC WORKS PLAN BACKGROUND AND HISTORY

Section 30114 of the Coastal Act defines public works to include, among other things, the following:

(b) All public transportation facilities, including streets, roads, highways, public parking lots and structures, ports, harbors, airports, railroads, and mass transit facilities and stations, bridges, trolley wires, and other related facilities. (...)

(c) All publicly financed recreational facilities, all projects of the State Coastal Conservancy, and any development by a special district.

Section 30605 of the Coastal Act states, in part:

To promote greater efficiency for the planning of any public works (...) and as an alternative to project-by-project review, plans for public works (...) may be submitted to the commission for review in the same manner prescribed for the review of local coastal programs set forth in Chapter 6 (commencing with Section 30500).

A Public Works Plan (PWP) is one of the alternatives available to the Commission and project proponents for Commission review of large or phased public works projects and remains under the authority of the Commission irrespective of coastal permitting jurisdictional boundaries. A PWP is an alternative to project-by-project review for public works (which, in the case of the overarching plan of which the current proposal is a part, would require multiple coastal development permits, in multiple jurisdictions, if not processed through a PWP). PWPs must be sufficiently detailed regarding the size, kind, intensity, and location of development to allow the Commission to determine their consistency with the Chapter 3 policies of the Coastal Act (in areas that are pre-LCP certification) or the certified LCP (in post-LCP certification areas). Once the Commission approves a PWP, in general, no coastal development permit is required for a specific project described within it; rather, before commencing each specific project, the project proponent must submit notice in the form of a NOID, which requires the Commission to determine whether the submitted project is consistent with the standards within the PWP, or if conditions are necessary to make it consistent. The PWP at issue here (known as the “NCC PWP/TREP”)¹ was approved by the Commission on August 13, 2014.

¹ As that name implies, this particular PWP is actually more than just a Public Works Plan. The “TREP” portion of the name reflects the fact that the package as a whole (referred to within this note as “the PWP”) includes components that were submitted to the Commission as a consistency certification (CC-0002-14), for review via the federal consistency process created by the Coastal Zone Management Act. In August of 2014, the Commission concurred with that consistency certification at the same time it certified the actual Public Works Plan. Finally, the PWP also includes project components that are within the Commission’s area of retained jurisdiction, and which therefore remain subject to the normal coastal development permit process, rather than the NOID process typically associated with PWPs.

Chapter 4 of the PWP/TREP (Scope of Planned Improvements) includes a description of specific projects, including rail improvements (e.g., double-tracking, rail bridge replacement, station improvements, tunnels); Interstate-5 improvements (e.g., high occupancy vehicle lanes, direct access ramp, auxiliary lanes, highway bridge replacement, park-and-rides); other transportation improvements (e.g., bus rapid transit, Coast Highway bus service, interchange improvements); bicycle, pedestrian, and recreational improvements (e.g., Coastal Rail Trail, North Coast Bike Trail, rail crossings, highway crossings, community enhancement projects); and natural resource and environmental improvements (e.g., restoration of corridor lagoons, bridge optimization). The location of these specific projects is also illustrated in several figures within Chapter 4.

Chapter 5 of the PWP/TREP (Coastal Development Policies and Resources) is divided into ten sections with each section containing policies, design/development strategies, and implementation measures, in order of increasing specificity, specific to the relevant issue area. The policies and design/development strategies apply to all NCC PWP/TREP improvements, while the implementation measures are project-specific and apply to NCC PWP/TREP improvements that are subject to the NOID review process (as indicated in the footnote on the prior page, this particular PWP includes analyses of projects within the commission's area of retained jurisdiction, which therefore remain subject to the normal CDP process, as well as some components that are to be reviewed through the federal consistency process rather than the NOID process).

STANDARD OF REVIEW

Sections 30605 and 30606 of the Coastal Act and Title 14, Sections 13357(a)(5), 13359, and 13353-54 of the California Code of Regulations govern the Coastal Commission's review of subsequent development where there is a certified PWP. The standard of review for those portions of the proposed project that are specifically authorized by the PWP component of the NCC PWP/TREP, and for which a Notice of Impending Development has been submitted, is whether the development is consistent with the PWP. Section 13354 requires the Executive Director to review the NOID within five working days of receipt to determine whether it provides sufficient information to determine if the proposed development is consistent with the certified PWP. The notice is to be filed when all necessary supporting information has been received.

Pursuant to Section 13359 of Title 14 of the California Code of Regulations, within thirty working days of the filing of the NOID, the Executive Director shall report to the Commission the pendency of the development and make a recommendation regarding the consistency of the proposed development with the certified PWP. After public hearing, by a majority of its members present, the Commission shall determine whether the development is consistent with the certified PWP as submitted, or whether conditions are needed to bring the development into conformance with the PWP.

II. MOTION AND RESOLUTION

MOTION:

*I move that the Commission determine that the development described in Notice of Impending Development NCC-NOID-0004-17 is **consistent** with the certified North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program as submitted.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in a determination that the development described in the NOID is consistent with the certified North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DETERMINE DEVELOPMENT IS CONSISTENT WITH NCC PWP/TREP:

The Commission hereby determines that the development described in Notice of Impending Development NCC-NOID-0004-17 is consistent with the certified North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program for the reasons discussed in the findings herein.

III. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION & DESCRIPTION

The North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program comprises a plan and implementation schedule for a series of rail, highway, transit, bicycle, pedestrian, and resource enhancement projects to improve mobility and access to coastal recreational resources in the corridor, from La Jolla to Oceanside, extending approximately 27 miles. More specifically, the NCC PWP/TREP includes widening of Interstate-5 to accommodate four new HOV lanes, double tracking of the LOSSAN rail corridor, Enhanced Coastal Bus and a Bus Rapid Transit service, a new 27 mile North Coast Corridor Bikeway that would provide non-motorized connectivity through the corridor, completion of 7 miles of the Coastal Rail Trail, other shorter connections to existing trail networks and transit stations, and resource enhancement projects (e.g. the San Elijo Lagoon Restoration Project) to mitigate for impacts arising from some of these transportation projects. The primary goal for these transportation projects is to move people more efficiently through a more coordinated and connected suite of transportation options that will encourage modes of travel other than the single occupancy vehicle. This would result in an anticipated transit mode share shift from the existing 2-3% condition to a 10-15% transit mode share.

At this time, the California Department of Transportation (Caltrans) is requesting review of Notice of Impending Development No. NCC-NOID-0004-17 to replace and relocate one utility pole (identified as Z24510) and install one new stub pole along the west side of Interstate 5 (I-5), replace and relocate one utility pole (identified as Z24511) along the east side of I-5, and re-string utility lines on both sides of the public highway between Birmingham Drive and Manchester Avenue in the City of Encinitas. A portion of the development will occur along the existing public highway, a portion will occur along a developed area adjacent to the west side of the highway, and a portion will occur on the base of the hillside east of the highway which is primarily covered by coastal sage scrub and southern maritime chaparral (**Exhibit 1**).

The replacement of pole Z24510 and the new stub pole on the west side of the highway are within an existing utility easement on property owned by the San Elijo Joint Powers Authority (JPA). The replacement of pole Z24511 and the construction access routes on the east side of the highway are within an existing utility easement on property owned by Caltrans and the San Elijo JPA (**Exhibit 2**). The proposed project also includes measures to avoid impacts to environmentally sensitive habitat areas and proposes off-site mitigation for two square feet of identified impacts.

The development will be carried out by San Diego Gas and Electric contractors and is necessary to enable the freeway expansion along the I-5 North Coast Corridor, which was previously authorized by the Commission with its approval of the NCC PWP/TREP. In addition to authorizing the freeway expansion itself, the NCC PWP/TREP includes the relocation of utility infrastructure to facilitate transportation improvements along the corridor. Thus, the subject project is authorized by the NCC PWP/TREP.

The standard of review for the subject NOID is its consistency with the NCC PWP/TREP. Caltrans has submitted a Consistency Analysis for Environmentally Sensitive Habitat Areas (ESHA) and Special-Status Species, and a Consistency Analysis for Visual Resources. The analyses discuss the NOID's consistency with the relevant sections of Chapter 5 of the NCC PWP/TREP. The Commission finds that the subject NOID is consistent with all policies and has incorporated all applicable design/development strategies and implementation measures of the NCC PWP/TREP, as discussed in greater detail in the findings sections below. The subsequent sections of this staff report include findings for the subject NOID and focus on consistency with the ESHA and visual resource policies of the NCC PWP/TREP, as there are no impacts to other coastal resources.

B. BIOLOGICAL RESOURCES CONSISTENCY ANALYSIS

Policy 5.5.1 of the NCC PWP/TREP states:

Development of NCC transportation facility and community enhancement projects shall be sited and designed to ensure that ESHAs are protected against any significant disruption of habitat values. Development in areas adjacent to ESHAs shall be sited and designed to prevent impacts that would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Design/Development Strategy 1 of the NCC PWP/TREP states:

The project-level analysis for potential impacts of new transportation improvements and associated community and resource enhancements improvements on ESHAs and special-status species shall be conducted and subject to review during subsequent project-specific Federal Consistency, NOID, or Coastal Development Permit Reviews to assess and identify all potential permanent or temporary impacts to ESHAs and special-status species and appropriate mitigation measures to ensure project consistency with Coastal Act Section 30240.

Design/Development Strategy 3 of the NCC PWP/TREP states:

Impact reduction measures for sensitive coastal upland and wetland habitats shall include construction monitoring and shall fully mitigate impacts pursuant to the REMP detailed in Chapter 6b as it relates to no net loss of habitat, habitat preservation, and comprehensive lagoon restoration program mitigation.

Consistent with Design/Development Strategy (DDS) 1, in the Commission’s review of each NOID subject to the NCC PWP/TREP, project-level analysis must be conducted “to assess and identify all potential permanent or temporary impacts to ESHAs and special-status species and appropriate mitigation measures.” Consistent with DDS 3, in order to determine that development identified in a NOID is consistent with the NCC PWP/TREP, the Commission must find that impact reduction measures will “fully mitigate impacts pursuant to the REMP.”

Notwithstanding the language in Policy 5.5.1 requiring that ESHAs be protected against significant disruption of habitat values, the NCC PWP/TREP as a whole anticipates that “approximately 64-74 acres of native upland habitat . . . would be directly impacted by the project” and the design/development strategies cited above allow for such impacts where they are an unavoidable consequence of the projects authorized by the NCC PWP/TREP, provided such impacts are fully mitigated. In its findings to approve the original NCC PWP/TREP in 2014, the Commission found that although impacts to ESHA would result from transportation improvements and associated development (including utility relocation), which are not listed as allowable uses under Section 30240, denying the NCC PWP/TREP because of this inconsistency would have been inconsistent with mandates of other Coastal Act policies. The Commission found that denial of the NCC PWP/TREP improvements (i.e., public transit improvements, bicycle and trail improvements, carpool lanes, lagoon restorations, and habitat restorations) would have resulted in significant adverse impacts to public access, biological resources, water quality, and air quality due to the persistence of the antiquated transportation system along San Diego County’s North Coast Corridor. Thus, the Commission applied the conflict resolution provisions of Coastal Act Sections 30007.5 and 30200(b), and it found that approval of the NCC PWP/TREP, notwithstanding its inconsistencies with Coastal Act Sections 30233 and 30240, was on balance, most protective of significant coastal resources.

The NOID indicates that two construction access routes from the east side of the highway will temporarily impact a total of 200 square feet of coastal sage scrub and southern maritime chaparral. Caltrans Biological Assessment concluded that the project would have only temporary impacts to environmentally sensitive habitat in these areas because of the proposed avoidance

measures set forth in the application, which are consistent with the NCC PWP/TREP policies, design/development strategies, and implementation measures.

Caltrans proposes to avoid permanent impacts to these two environmentally sensitive habitat areas by conducting the majority of construction staging within existing developed areas near the roadway, and within the San Elijo Joint Powers Authority sewage treatment plant to the west of the highway. In two approximately 10-foot by 10-foot areas at the base of the slope on the east side of the highway which have been identified as the minimum size required for construction access, Caltrans has proposed measures to avoid permanent impacts to ESHA. These areas will be accessed by foot, and consistent with Policy 5.5.1, Caltrans proposes to crush vegetation during construction instead of removing it. Consistent with Implementation Measure (IM) 5.5.1, Caltrans proposes to revegetate and restore disturbed areas to pre-existing conditions following construction. Consistent with IM 5.5.4, Caltrans proposes to complete construction and re-seeding activities outside of bird nesting season. Additionally, Caltrans proposes to make all efforts to eradicate invasive plant species in the project area, consistent with IM 5.5.2.

Despite these proposed avoidance measures, Caltrans has identified two square feet of unavoidable impacts to ESHA, which will be mitigated off-site pursuant to the NCC PWP/TREP's Resource Enhancement and Mitigation Program (REMP), as required by DDS 3. The installation of two guy wires to anchor the new utility pole on the east side of the highway will permanently impact two square feet of coastal sage scrub. This permanent impact is identified as the smallest one possible given the site conditions and identified alternatives. Caltrans initially proposed to mitigate this impact on-site by revegetating the area, but has modified its proposal to provide off-site mitigation at the Hallmark East Mitigation Site, which currently has a credit balance of 0.40 acres of upland habitat available to mitigate impacts to upland habitat in other areas.

The Long-Term Management Plan for the mitigation site sets the conditions for when mitigation credits can be released and sets forth required monitoring. As of September 19, 2017, the Hallmark East Mitigation Site has exceeded its Year 2 performance goals, approximately 2/3 of the available mitigation credits have been released, and monitoring will be ongoing for an additional three years. Thus, the impacts to coastal sage scrub associated with the Notice of Impending Development will be mitigated off-site at a 1:1 ratio because there will be no temporal loss of habitat area.

The NCC PWP/TREP authorized the relocation of utility infrastructure to facilitate transportation improvements along the corridor. The two square feet of identified permanent impacts to ESHA will be mitigated as required by the NCC PWP/TREP. Therefore, the Commission finds that the subject NOID is consistent with the applicable policies, design/development strategies, and implementation measures included in Section 5.5.3 (Environmentally Sensitive Habitat Areas and Special Status Species) of the NCC PWP/TREP.

C. VISUAL RESOURCES CONSISTENCY ANALYSIS

Policy 5.7.1 of the NCC PWP/TREP states:

Development of NCC transportation facility and community enhancement projects shall be sited and designed in a manner that protects, to the maximum extent practicable, public views to significant coastal resources, including views of the ocean and coastline, coastal lagoons and river valleys, and significant open space areas. New development shall be sited and designed to be compatible with existing development and surrounding areas such that the impacts of grading, operational activities, and direct lighting on public views outside of the transportation facilities and community enhancement improvements are limited to the maximum extent feasible.

The subject NOID includes replacement of two utility poles of approximately the same height and dimension to existing utility poles, in approximately the same locations. However, consistent with Policy 5.7.1 and Design/Development Strategy (DDS) 5, Caltrans proposes to integrate transportation infrastructure into the existing landscape by constructing the utility poles with dulled galvanized steel painted to blend into the natural environment better than wood utility poles. Additionally, the stub pole on the west side of the highway will have fewer visual impacts than new guy wires and anchors would have in that area.

Caltrans' proposal to re-seed disturbed areas around the infrastructure on the east side of the highway is also consistent with DDS 5 because the vegetation that eventually grows will blend with the existing vegetation and disguise some of the infrastructure. Caltrans' proposal to exclude lighting from the subject NOID is consistent with DDS 1.

Finally, Caltrans has consulted with the City of Encinitas, consistent with IM 5.7.2. Caltrans provided the City with copies of the design plans similar to those identified in **Exhibit 2**, which also identify two replacement utility poles within the San Elijo JPA sewage treatment plant area further west of the public highway. Those utility pole replacements are subject to the City's certified Local Coastal Program jurisdiction rather than the NCC PWP/TREP. The City determined that the replacement of those poles did not require a coastal development permit. This process also afforded the City an opportunity to review and comment on the design of the development within the NCC PWP/TREP area subject to this NOID.

As submitted, the development will avoid impacts to visual resources including the coastal sage scrub and southern maritime chaparral along the hillside adjacent to the public highway to the maximum extent practicable given project requirements (relocation of utility poles to facilitate road widening that has already been anticipated in the Commission-approved NCC PWP/TREP). Because of the topography of the site, there are currently no ocean views and the project will not change that condition. The design and size of the replacement poles and re-vegetation plan have been designed to integrate transportation infrastructure into the existing developed and natural landscapes. Therefore, the Commission finds that the subject NOID, as submitted, is consistent with the applicable policies, design/development strategies, and implementation measures included in Section 5.7.3 (Visual Resources) of the NCC PWP/TREP.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Pursuant to Public Resources Code Section 21067 and Sections 15050 and 15051 of Title 14 of the California Code of Regulations, Caltrans is the lead agency, for purposes of the California Environmental Quality Act (CEQA), for the project at issue in this report, as it is the public agency with principal responsibility for carrying out the I-5 related improvements, as well as the larger NCC PWP/TREP. As the lead agency under CEQA, Caltrans certified a Final Environmental Impact Report (EIR) addressing the subject plan on October 23, 2013.² Caltrans is also the state-designated lead agency under CEQA for the rail component of the NCC PWP/TREP, and as such, released the LOSSAN FINAL Program EIR/EIS in September 2007, with the Record of Decision issued on March 18, 2009.

Although the Commission is only a “responsible agency” under CEQA, as an agency with a certified regulatory program under CEQA Section 21080.5, the Commission must consider alternatives and mitigation measures that would substantially lessen any significant adverse environmental effects that that the proposal would otherwise have on the environment. Section 21080.5(d)(2)(A) prohibits the Commission from approving a proposed development if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. As proposed, there are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact that the activities may have on the environment. Therefore, the Commission finds that the NOID is consistent with CEQA Section 21080.5(d)(2)(A), as well as the applicable provisions of the PWP/TREP.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program, approved by the Commission on August 13, 2014 (PWP-6-NCC-13-0203-1)
2. Policy Consistency Analyses – 5.5 Environmentally Sensitive Habitat Areas and Special Status Species; 5.6 Archeological and Paleontological Resources; 5.7 Visual Resources
3. NCC PWP/TREP Long-Term Management Plan Mitigation Credit Table (updated November 13, 2017)

² The certification of that EIR was the subject of litigation in San Diego Superior Court; *Cleveland National Forest Foundation v. California Department of Transportation*, San Diego Superior Court Case No. 37-2013-00078391-CU-TT-CTL. According to Caltrans, the matter was dismissed with prejudice on January 10, 2017, pursuant to a settlement agreement.