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STAFF REPORT: REGULAR CALENDAR

Application No.:	1-20-0455
Applicant:	Vero Fiber Networks, LLC
Agent:	CSW/Stuber-Stroeh Engineering Group, Inc
Location:	Within a nine-mile-long stretch of public road rights-of-way primarily along Highway 255 and within connecting City and County roads from Samoa to Arcata, Humboldt County
Project Description:	Install underground parallel fiber optic cable conduit (18 total miles of conduit) using horizontal directional drilling and a series of manholes, handholes, and bore pits
Staff Recommendation:	Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant, Vero Fiber Networks, LLC, proposes to install, via horizontal directional drilling (HDD), high-density polyethylene fiber optic cable conduits within two parallel bore paths at least 10 feet below ground surface along approximately nine linear miles of public road rights-of-way from Arcata to Samoa in Humboldt County (Exhibit 1). This trenchless construction method minimizes disturbance by limiting surface disturbance to bore entry/exit pits, of which there will be approximately 128 total (approximately 64 along each bore path).

The primary Coastal Act issues associated with the project are the potential impacts to water quality and ESHA. The applicant has proposed various best management practices and avoidance and minimization measures, including, but not limited to: (1) completing updated biological surveys, (2) flagging off sensitive areas for avoidance prior to commencement of construction, (3) employing a biological monitor onsite during construction to ensure that activities avoid encroachment into ESHA, and (4) conducting a pre-construction environmental awareness training by the biological monitor to inform construction personnel of the nearby sensitive resources and restrictions on encroachment into sensitive areas. In addition, the applicant submitted a Water Pollution Control Program that includes Water Pollution Control Drawings and a Water Pollution Control Schedule, which provide the necessary tools for a contractor to plan and implement BMPs to meet the requirements of the project WPCP. The applicant also submitted an HDD contingency plan that includes measures for prevention, containment, cleanup, and disposal in the event of any accidentally released drilling fluids or drilling mud. Staff recommends various special conditions to ensure that the proposed measures to minimize and avoid potential impacts to water quality and ESHA are implemented and to require certain additional measures to ensure the project is consistent with relevant Coastal Act policies. The additional measures include, among other requirements, submittal of a final Debris Disposal Plan and a Soil and Waste Excavation and Management Plan to address the potentially contaminated and hazardous soils.

Staff believes that the project, as conditioned, includes all feasible mitigation measures necessary to find the project consistent with the Chapter 3 policies of the Coastal Act. The Motion to adopt the staff recommendation of Approval with Conditions is found on page 4.

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[Exhibit 8: Excerpt of Proposed Cultural Resources Testing Plan](#)

I. Motion and Resolution

A. Motion

I move that the Commission **approve** Coastal Development Permit Application No. 1-20-0455 pursuant to the staff recommendation.

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

B. Resolution

The Commission hereby **approves** Coastal Development Permit Application No. 1-20-0455 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or (2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid, and development shall not commence, until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

This permit is granted subject to the following special conditions:

1. **Encroachment Permits.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director, for review and approval, evidence that any needed encroachment permits have been obtained from the City of Arcata and California Department of Transportation (Caltrans) for the development, or evidence that no such encroachment permit is required. The encroachment permit or exemption shall provide evidence of the ability of the permittee to develop within Caltrans and City property, including public street rights-of-way, as conditioned herein. The permittee shall inform the Executive Director of any changes to the project required by Caltrans and/or the City. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
2. **Construction Responsibilities.**
 - A The permittee shall undertake development in compliance with the following Avoidance and Minimization Measures (AMMs) and Best Management Practices (BMPs) proposed in the CDP application, as modified herein:
 - i **Construction Phasing as Proposed.** Construction shall be phased as shown in the Construction Phasing Plan prepared by CSW/ST2 dated 1/18/2021 (Exhibit 4). Construction within each phase segment (phase 1, 2, 3, and 4) shall proceed consistent with all special conditions of CDP 1-20-0455.
 - ii **Environmental Awareness Training.** PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION ACTIVITIES, the permittee shall provide an environmental awareness training, to be given by the Biological Monitor and Archaeological Monitor required by subparts (viii) and (ix) below, for all construction personnel [including additional training(s) for new personnel as they are added to the Project] on the resource protection measures required by the CDP, including, but not limited to, the requirements to avoid encroachment into delineated sensitive areas, the authority of the Biological Monitor and of the Archaeological Monitor to halt work activities in any area if necessary to avoid adverse impacts to sensitive resources, the prohibition on major vegetation removal, specific testing and drilling requirements in certain construction segments, procedures for dealing with unanticipated discoveries of ESHA and archaeological resources, and other required AMMs and BMPs to

protect water quality and sensitive resources in and adjacent to the project area. All participants in the training shall provide written verification that they have completed the training, and the monitors shall submit training verification forms and a copy of the training material to the Executive Director within 30 days after construction starts.

- iii **Pre-Construction Biological Surveys.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF EACH CONSTRUCTION PHASE (phase 1, 2, 3, and 4), and during construction if required by the conditions herein, a qualified biologist shall complete the proposed pre-construction “clearance” surveys for sensitive species of nesting birds, amphibians, and rare plants according to California Department of Fish and Wildlife (CDFW) recommended survey protocols within and adjacent to the construction phase segment consistent with Special Conditions 3, 4, and 5 as recommended by Transcon Environmental, Inc., in its Biological Evaluation report, dated July 2020. Survey results shall be provided to the Executive Director as required by the referenced conditions prior to commencement of construction of each construction phase segment.
- iv **Pre-Construction Archeological Testing.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE PHASE 1, PHASE 3, AND THE DISJUNCT SOUTHERN SECTION OF THE PHASE 2 CONSTRUCTION SEGMENTS, the applicant shall complete the proposed pre-construction “clearance” tests for archaeological resources consistent with the Cultural Resources Testing Plan (submitted February 23, 2021, Exhibit 8) and all relevant conditions of this CDP. Archaeological and Tribal monitoring shall occur at all testing locations per subpart (ix), below. Testing results shall be evaluated by a qualified professional archaeologist and the THPOs of the three Wiyot area tribes and bore pit locations shall be adjusted to avoid disturbance of any archaeological resources discovered by the testing. Revised construction plans shall be submitted for the review and approval of the Executive Director for any project changes, including movement of a proposed bore pit location on the basis of the archaeological tests.
- v **Flagging of Biologically Sensitive Areas.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF EACH CONSTRUCTION PHASE (phase 1, 2, 3, and 4), a qualified biologist shall identify with flagging, orange construction barrier fencing, or other similar temporary means, the boundaries of wetlands and other types of ESHA within and adjacent to the construction segment as applicable. Flagged areas shall include wetlands and ESHA identified by Transcon Environmental, Inc., in its Wetland Delineation and Biological Evaluation reports (dated June 2020 and July 2020, respectively), as updated pursuant to the proposed pre-construction ESHA surveys (Special Conditions 3, 4 and 5). Construction equipment staging and laydown areas, bore pits, handholes, and all other project activities and authorized development shall avoid encroachment into delineated sensitive areas. Demarcated

areas shall be inspected daily throughout construction to ensure that they are visible for construction personnel.

- vi **Limiting Areas of Temporary Impact.** The contractor shall identify with flagging, cones, or other similar temporary means, the boundaries of temporary staging and stockpiling areas for construction equipment, supplies, personnel parking, and other ancillary functions within the active construction segment. Areas delineated for this purpose shall avoid encroachment into wetlands, ESHA, and culturally sensitive areas identified by the Biological, Archaeological, and Tribal Monitors.
- vii **Water Pollution Prevention.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF EACH CONSTRUCTION PHASE (phase 1, 2, 3, and 4), the permittee shall ensure all temporary erosion, runoff, and sediment control BMPs are in place in accordance with the approved final Water Pollution Prevention Plan and Horizontal Directional Drilling (HDD) Contingency Plan required to be implemented by Special Conditions 7 and 8, respectively.
- viii **Biological Monitoring.** A Biological Monitor shall be present on site in construction segments that have delineated sensitive areas per subpart (v), above, to advise the contractor on and to ensure compliance with the required sensitive resource protection measures of this permit. The Monitor shall be a qualified biologist with the ability to recognize sensitive species and habitats in the project vicinity. The Monitor shall have the authority to stop work activities in any area if required to avoid adverse impacts to sensitive resources. The Monitor shall be onsite full-time during the pre-construction archeological testing required by subpart (iv) above in locations adjacent to biologically sensitive resources, initial equipment mobilization, and site preparation (including fence installation), and during the final demobilization phase of construction. In addition, the Monitor shall make daily site visits during project construction for construction segments that have delineated sensitive areas per subpart (v) above. The Monitor shall maintain records of daily activities, observations, and communications with the permittee and/or construction personnel. The daily logs shall be made available for agency review upon request and shall be submitted to the Executive Director following completion of construction.
- ix **Archaeological Monitoring.** An Archaeological Monitor and a Tribal Monitor shall be present on site during construction in those construction segments (phases 1, 3, and the disjunct southern section of phase 2) mapped and approved by the THPOs of the three Wiyot area Tribes as requiring cultural monitoring to advise the contractor on and to ensure compliance with the required archaeological resource protection measures of this permit. The Monitors shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of required procedures for the inadvertent discovery of archaeological

resources and human remains as required by Special Condition 6. The Monitors shall have the authority to stop work activities in any area if required to avoid adverse impacts to sensitive resources.

- x **Minimize Traffic Impacts.** Vehicular traffic during construction shall be confined to existing designated routes of travel, and cross-country vehicle and equipment use outside of designated work areas is prohibited.
 - xi **Invasive Species Prevention.** Construction equipment shall be cleaned prior to entering the work site to minimize the potential for the transport of non-native vegetation seeds and plant material. Rock, sand, or any material used for soil erosion control shall originate from a certified weed-free source to avoid the inadvertent introduction of non-native plant species to surrounding environmentally sensitive areas.
 - xii **Spill Prevention.** Fuels, lubricants, solvents, and other hazardous materials shall not be allowed to enter the coastal waters or wetlands. Hazardous materials management equipment shall be available immediately on-hand at the project site, and a registered first-response, professional hazardous materials cleanup/remediation service shall be locally available on call. Any accidental spill shall be rapidly contained and cleaned up consistent with the final Water Pollution Prevention Plan and HDD Contingency Plan required by Special Conditions 7 and 8.
 - xiii **Drilling and Frac-Out Contingency.** To protect adjacent wetlands, waters, and other sensitive areas in the event of a frac-out or other accidental drilling fluid release, the permittee shall implement the revised final HDD Contingency Plan required by Special Condition 8.
 - xiv **Trash/Debris.** During construction, all trash shall be properly contained, removed from the work site, and disposed of on a regular basis to avoid contamination of habitat during construction activities. Any debris inadvertently discharged into coastal waters or surrounding habitats shall be recovered immediately and disposed of consistent with the requirements of this CDP. All construction debris shall be disposed of in an upland location outside of the coastal zone or at an approved disposal facility pursuant to the final debris disposal plan required by Special Condition 11.
- B The permittee shall also implement the following additional mitigation measures imposed by this CDP that are necessary to further protect coastal resources:
- i **Plastic Netting Prohibition.** To minimize wildlife entanglement and plastic debris pollution, the use of temporary rolled erosion and sediment control products with plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers used in fiber rolls, erosion control blankets, and mulch control netting) is prohibited. Any erosion-control associated netting shall be made of natural fibers and

constructed in a loose-weave design with movable joints between the horizontal and vertical twines.

- ii **Revegetation.** Any disturbed areas shall be appropriately stabilized and revegetated following construction utilizing only regionally appropriate or locally grown or collected native plant seeds and shall not include any species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or the State of California.
3. **Protection of Sensitive Bird ESHA.** If work is conducted during the avian nesting season (February 15-August 31), PRIOR TO COMMENCEMENT OF CONSTRUCTION OF EACH CONSTRUCTION PHASE (phase 1, 2, 3, and 4), the permittee shall undertake development in compliance with all of the following proposed measures to protect nesting habitat areas of rare, threatened, and endangered bird species (hereafter sensitive bird ESHA) from significant disruption:
 - A A qualified biologist shall survey the construction segment for sensitive bird ESHA (i.e., active nesting areas of sensitive bird species) in and adjacent to the construction area according to current California Department of Fish and Wildlife (CDFW) recommended survey protocol(s) no more than seven days prior to the commencement of construction within the construction segment. The minimum survey area shall include areas recommended by Transcon Environmental, Inc., in its Biological Evaluation report dated July 2020, including areas within 100 feet of the construction segment footprint and, where there is the potential for nesting raptors, in areas within 300 feet of the construction area footprint. Surveys within a construction segment shall also be repeated any time construction activities within the construction segment have ceased for more than seven days;
 - B If any sensitive bird ESHA is detected (i.e., detection of an active nesting areas of sensitive species), the biologist, in consultation with CDFW, shall determine the extent of a construction-free buffer zone to be established around the nest, and construction in the buffer zone shall be delayed until after the young have fledged, as determined by additional surveys conducted by a qualified biologist. The construction-free buffer zone shall be a minimum of 300 feet for nesting raptors and a minimum of 100 feet for other special-status bird species; and
 - C The permittee shall submit to the Executive Director the survey required in subpart A above, including a map that locates any sensitive bird nesting habitat identified by the survey and delineates any required construction-free buffer zone, and a narrative that describes proposed nesting bird disturbance avoidance measures.
4. **Protection of Northern Red-legged Frog.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE PHASE 2 AND PHASE 3 CONSTRUCTION

SEGMENTS, the permittee shall undertake development in compliance with the following proposed measures:

- A A qualified biologist shall perform a pre-construction survey for Northern red-legged frog (adults, subadults, tadpoles, or egg masses) according to current CDFW recommended survey protocol in areas that have been identified as potential suitable habitat for special-status amphibians by Transcon Environmental, Inc., in its Biological Evaluation report dated July 2020, which includes areas within each construction corridor within 25 feet of intermittent waterways that have water present and areas within 50 feet of perennial waters. Surveys shall extend at least 50 feet upstream and downstream of the work area. Survey results shall be provided to the Executive Director for review prior to commencement of construction; and
 - B If Northern-red legged frog is detected during the survey(s), the qualified biologist shall consult with CDFW to determine whether to relocate the frog(s) to a safe location in similar nearby habitat further away from the construction zone prior to commencement of construction near the inhabited waterways.
5. **Protection of Rare Plant ESHA.** The permittee shall undertake development in compliance with the following proposed mitigation measures to protect environmentally sensitive rare plant habitat areas (rare plant ESHA).
- A PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE PHASE 4 CONSTRUCTION SEGMENT, a qualified botanist shall complete seasonally appropriate pre-construction surveys according to CDFW-approved survey protocols for rare plant ESHA within and adjacent to the construction segment;
 - B If rare plant ESHA is detected during the survey(s), a qualified botanist shall identify with flagging, orange construction barrier fencing, or other similar temporary means the boundaries of any rare plant ESHA identified within and adjacent to the construction segment;
 - C Construction equipment staging and laydown areas, bore pits, handholes, and all other project activities and authorized development shall be located so as to avoid encroachment into delineated rare plant ESHA. Demarcated areas shall be inspected daily throughout construction to ensure that they are visible for construction personnel; and
 - D The permittee shall submit survey results to the Executive Director for review prior to commencement of construction of Phase 4 construction. Submitted results shall include details on surveyor qualifications, date(s) of survey(s), and a map of any detected rare plant ESHA.
6. **Protection of Archaeological Resources.** The permittee shall undertake development in compliance with the following mitigation measures to protect archaeological resources:
- A AT LEAST TWO WEEKS PRIOR TO COMMENCEMENT OF ANY GROUND-DISTURBING CONSTRUCTION ACTIVITIES, including pre-construction

- archaeological testing per Special Condition 2-A-iv, the permittee shall (i) notify the Tribal Historic Preservation Officers (THPO) appointed by the Blue Lake Rancheria, Bear River Band of Rohnerville Rancheria, and the Wiyot Tribe at Table Bluff Reservation; (ii) invite Tribal representatives to be present and to monitor ground-disturbing activities; and (iii) arrange for a qualified Archaeological Monitor and a Tribal Monitor to be present to observe ground-disturbing activities in those construction segments mapped and approved through Tribal consultation as requiring cultural monitoring. The Monitor(s) shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended Tribal procedures for the inadvertent discovery of archaeological resources and human remains.
- B If an area of archaeological resources is inadvertently discovered during ground-disturbing activities [including, but not limited to, concentrations of prehistoric artifacts (chipped chert or obsidian, arrow points, groundstone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites (midden with or without shell), concentrations of fire-altered rock and/or burned or charred organic materials, etc.], all construction shall cease and shall not recommence except as provided in subsection (C) hereof, and the permittee shall retain a qualified archaeologist to analyze the significance of the find in consultation with the Wiyot area THPOs. The archaeologist shall immediately notify the THPOs of the three Wiyot Area Tribes. An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone recommended by the Monitor(s). Construction may continue outside of the exclusion zone area.
- C A permittee seeking to recommence construction within the sensitive area following discovery of the archaeological resources shall submit a Supplementary Archaeological Plan (SAP) for the review and written approval of the Executive Director, in consultation with the THPOs from the three Wiyot Area Tribes. If the Executive Director approves the SAP and determines that the SAP’s recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director in writing. If the Executive Director approves the SAP but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.
- 7. Revised Final Water Pollution Control Plan.**
- A PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director’s review and written approval, a revised final Water Pollution Control Plan (WPCP). The plan shall substantially conform with the proposed WPCP dated August 27, 2020 (revised plan submitted January 18, 2021), except the plan shall include

written confirmation that the plan has been updated to comply with the terms and conditions of this CDP, including, but not limited to, Special Conditions 2-B-i and 2-B-ii.

- B The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this CDP unless the Executive Director determines that no amendment is legally required.

8. Revised Final HDD Contingency Plan.

- A PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and written approval, a revised final Horizontal Directional Drilling Contingency Plan (HDD Plan). The plan shall substantially conform with the proposed HDD Plan dated December 2020 (revised plan submitted January 18, 2021, Exhibit 6), except the plan shall include the following revisions:

- i Specification on page three of the Soil Conditions Memorandum (Appendix A of the Plan) of those specific excavation points (bore pits, manholes, etc.) that are subject to the special measures that have been reviewed and approved by the Regional Water Quality Control Board for drilling, materials testing and handling, and worker safety required to minimize risks associated with residual dioxins and other constituents of concern potentially occurring in soil and groundwater in the vicinity of Mad River Slough;
- ii Specification on page three of the Soil Conditions Memorandum (Appendix A of the Plan) that the results of the certified laboratory tests of excess drilling mud for dioxins, furans, etc. shall be provided to the Executive Director for review and approval prior to disposal or reuse of tested materials. The results shall include identification of proposed authorized disposal facilities capable of receiving the wastes; and
- iii Updates to Section 4.4 of the Plan (Known Sites of Contamination) to add reference to the requirements to follow the special measures and procedures for drilling, construction, and worker safety in the approved final Worker Health and Safety Plan and Soil and Waste Excavation and Management Plan, required by Special Conditions 9 and 10 (respectively), for work within 1,000 feet of the Samoa Ash Landfill.

- B The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this CDP unless the Executive Director determines that no amendment is legally required.

9. Worker Health and Safety Plan for Work Around Samoa Ash Landfill. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE PHASE 4

CONSTRUCTION SEGMENT, the permittee shall submit, for the Executive Director's review and approval, a final Worker Health and Safety Plan that has been reviewed and approved by the Humboldt County Division of Environmental Health that addresses measures to minimize risks from landfill gases and potential worker exposure to hazardous materials associated with construction areas within 1,000 feet of the Samoa Ash Landfill within the Phase 4 construction segment. The plan shall be prepared by a qualified geologist or engineer.

- A The plan shall include, at a minimum, measures to:
 - i Minimize risks of exposure by construction workers to anticipated hazardous materials (e.g., wood ash), to potential unanticipated waste types (e.g., municipal solid waste), and to potential landfill gas accumulation post-construction by operational and maintenance personnel; and
 - ii Assure project stability and structural integrity associated with any incompetent waste fill material that may be present.
- B The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this CDP unless the Executive Director determines that no amendment is legally required.

10. **Soil and Waste Excavation and Management Plan for Phase 4 Construction.**

PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE PHASE 4 CONSTRUCTION SEGMENT, the permittee shall submit, for the Executive Director's review and written approval, a final Soil and Waste Excavation and Management Plan that has been reviewed and approved by the Humboldt County Division of Environmental Health that addresses soil and waste management for construction areas within 1,000 feet of the Samoa Ash Landfill within the Phase 4 construction segment. The plan shall be prepared by a qualified geologist or engineer.

- A The plan shall include, at a minimum, the following:
 - i A description of the specific locations, methods, and procedures for staging, stockpiling, managing, characterizing, testing, and disposing of soil, groundwater, and waste material expected to be encountered during construction;
 - ii Provisions for ensuring that all staging, stockpiling, management, and disposal of waste is consistent with special conditions 2 through 11 of this CDP;
 - iii Procedures for managing unanticipated waste types (i.e., municipal solid waste) that may be encountered during construction;
 - iv BMPs for odor and dust control, including, but not limited to, measures to reduce the potential for exposure of staged and stockpiled materials to wind and stormwater runoff;

- v Provisions for characterizing and testing soil, groundwater, and waste material in accordance with California Department of Toxic Substances Control (DTSC) Protocol for Burn Dump Site Investigation and Characterization. Testing should include, at a minimum, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons (PAHs), dioxins/furans, organochlorine pesticides (OCPs), and California Administrative Metals (CAM-17) heavy metals; and
 - vi Provisions for proper waste disposal at authorized facilities capable of receiving the waste(s).
- B The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this CDP unless the Executive Director determines that no amendment is legally required.
11. **Debris Disposal Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a plan for the disposal of excess construction debris and hazardous materials (e.g., contaminated soils and groundwater). The plan shall list the names of all authorized disposal site(s) where materials will be lawfully disposed of and describe the manner and schedule by which the materials will be removed from the construction site. The permittee shall undertake development in accordance with the approved final Debris Disposal Plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
12. **Assumption of Risk, Waiver of Liability, and Indemnity Agreement.** By acceptance of this permit, the permittee acknowledges and agrees (A) that the site may be subject to hazards from waves, storms, flooding, erosion, earth movement, and other natural hazards, many of which will worsen with future sea level rise; (B) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (C) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (D) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

IV. Findings and Declarations

A. Project Description and Location

The applicant, Vero Fiber Networks, LLC, proposes to install, via horizontal directional drilling (HDD), high-density polyethylene fiber optic cable conduits, six-inches to eight-inches in diameter, within two parallel bore paths, referenced as FH1 and FH2, at least ten feet below ground surface in approximately nine linear miles of public road rights-of-way from Arcata to Samoa in Humboldt County (Exhibit 2). From north to south, the project route parallels the eastern sides of K St. and J St. in Arcata from 8th St.¹ southward to each street's respective intersection with Highway 255, and then proceeds westward along both sides of Highway 255/New Navy Base Road to a roadside point in Samoa near the Humboldt Bay Municipal Water District water tank. The southern terminus of the project is adjacent to the proposed cable landing yard for a separate project, the Eureka Subsea Fiber Optic Cables Project, that will be separately reviewed under a forthcoming CDP application from RTI Infrastructure, Inc.

Due to the length of the project area, the construction footprint is divided into four phases or construction segments (Exhibit 4), which are (from north to south): (1) Phase 1 - portions of the project within the City of Arcata; (2) Phase 2 - (a) portions of the project along Highway 255 from the City limits to the west side of Mad River Slough, and (b) a disjunct segment from the intersection of Highway 255/New Navy Base Road and the Samoa Bridge southward for approximately 0.7 mile; (3) Phase 3 - portions of the project between the west side of Mad River Slough to the intersection of Highway 255/New Navy Base Road and the Samoa Bridge; and (4) Phase 4 – the southern approximately 1.3 miles of the project area. Construction phases (segments) may be conducted in a disjointed manner rather than in sequence from one end of the line to the other.

The installation process for the fiber optic line involves excavating bore pits every 800 feet along the nine-mile-long route. HDD is a steerable, trenchless method that involves drilling a pilot bore hole and, with guidance equipment and continuous drill bit position monitoring, enlarging the bore with a reaming tool that is attached to the drill steel and pulled through the pilot bore hole. HDD uses a clay/water mixture (drilling mud) that is pumped down the drill stem to lubricate the drill head and drill pipe, maintain the bore hole opening, and remove bore cuttings. Once drilling is complete, the conduit is pulled through the bore hole and spliced together through manhole and/or handhole locations (handholes are sites where the conduit that will contain the fiber optic cable would be pulled through holes and spliced together).

There would be 64 excavation points along each bore path alignment (a total of 128 excavation points). Each excavation point would consist of a bore/receive pit and,

¹ The project area extends northward from 8th St. beyond the coastal zone boundary, but this permit only authorizes proposed development within the coastal zone.

ultimately, either a single permanent manhole or two permanent manholes and one permanent handhole.

Various types of heavy equipment would be used during construction, including, but not limited to, two directional bore rigs; two mini excavators; air compressor; concrete saw; two 5-yard dump trucks; three 1-ton utility trucks equipped with tools, arrow boards, equipment trailers, etc.; and a vacuum truck. Equipment staging and laydown areas would be located along the rights-of-way within a temporary 25-foot-wide construction corridor that would extend for approximately 800-foot-long segments. Work zones would be delineated by cones and/or barricades in compliance with locally approved traffic control plans.

The project as proposed includes various best management practices and avoidance and minimization measures to mitigation potential adverse impacts to water quality and environmentally sensitive habitat areas, as shown in Exhibit 7, and to archaeological resources.

Project construction would occur over approximately ten months, with a planned start date in the spring of 2021. Construction would occur five days per week for up to ten hours per day, mostly during daylight hours.

B. Environmental Setting

The proposed conduit alignment extends west from the City of Arcata along Highway 255 through agricultural lands, and then south along the Samoa Peninsula through rural residential areas and the communities of Manila and Samoa. Other important features of the project location include the former Sierra Pacific Industries mill site with known contaminants located at 2593 New Navy Base Road, adjacent to Mad River Slough, and an old landfill at the southern end of the project on the Samoa Peninsula between the closed Louisiana Pacific mill and New Navy Base Road, called the Samoa Ash Disposal Site (Exhibit 2).

The project area is located along Humboldt Bay and is largely surrounded by numerous associated perennial and intermittent waterways, sloughs, and wetlands. Specifically, the alignment is flanked on its eastern and southern sides by the bay. Several tidal channels intersect the proposed project alignment along Highway 255, including Mad River Slough and three unnamed sloughs. These sloughs support habitat for a variety of saltwater and anadromous fish species. The banks of most of the sloughs are dominated by emergent estuarine plant species such as common pickleweed, seaside arrowgrass, seablite, and cordgrass. Several drainage ditches also run along both sides of Highway 255. These ditches are primarily dominated by a variety of native and non-native emergent grasses and forbs such as slough sedge (*Carex obnupta*), tall cyperus (*Cyperus eragrostis*), horsetail (*Equisetum arvense*), and cattail (*Typha* spp.).

The vegetation communities in the project area include beach pine, willow thickets, coastal dunes, annual grasses and forbs, salt marsh, freshwater marsh, and freshwater emergent wetlands.

C. Standard of Review

The proposed project includes development that is located within both the retained CDP jurisdiction of the Coastal Commission and the CDP jurisdictions of Humboldt County and the City of Arcata. Under Coastal Act Section 30601.3, when a project requires a CDP from both a local government with a certified local coastal program and the Commission, the Commission may process a consolidated CDP application for the proposed development when the applicant, the local government, and the Commission's Executive Director agree to process the CDP as a consolidated CDP. In this case, the applicant, Humboldt County, and the City of Arcata have each requested that the Commission process a consolidated CDP for this project, and the Executive Director has agreed.

D. Other Agency Approvals

California Department of Fish and Wildlife (CDFW)

CDFW has regulatory jurisdiction over the project pursuant to the California Fish and Game Code and the California Endangered Species Act. CDFW determined that the proposed project is subject to the notification requirement in Fish and Game Code section 1602 but will not substantially adversely affect an existing fish or wildlife resource, and therefore does not require a Lake or Streambed Alteration Agreement.

North Coast Unified Air Quality Management District (AQMD)

Commission staff referred the project to the AQMD and received a response that no air quality permits are needed.

County of Humboldt

As development will occur within County of Humboldt right-of-way, a County encroachment permit has been obtained.

City of Arcata

As development will occur within City of Arcata right-of-way, a City encroachment permit is required and has not yet been obtained. Therefore, **Special Condition 1** requires submittal of the City encroachment permit prior to commencement of Phase 1 of construction. If the City's permit requires changes to the project, Special Condition 1 requires that those changes not be incorporated into the project until the applicant obtains an amendment to this CDP unless the Executive Director determines that no amendment is legally required.

California Department of Transportation (Caltrans)

As development will occur within Caltrans right-of-way, a Caltrans encroachment permit will be required and has not yet been obtained. Therefore, Special Condition 1 requires submittal of the Caltrans encroachment permit prior to commencement of Phase 1 of

construction. If Caltrans' permit requires changes to the project, Special Condition 1 requires that those changes not be incorporated into the project until the applicant obtains an amendment to this CDP.

E. Water Quality

Section 30230 of the Coastal Act states as follows:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states as follows:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states as follows:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

As discussed above, under Finding B (Environmental Setting), several sloughs intersect the proposed project alignment along Highway 255, including Mad River Slough and three unnamed sloughs. In addition, several drainage ditches run along both sides of Highway 255. While the project proposes to avoid direct impacts to these waters and wetlands by strategically locating bore pits outside of such features and drilling underneath them, the project has the potential to impact water quality. The primary water quality issues raised by the proposed project relate to (1) the discharge of excavated materials, drilling muds, fluids and other materials from construction activities (2) the risk of hydraulic fracturing (frac-out) from horizontal directional drilling, (3) the potential for mobilization of residual contaminants in soil and groundwater around the former Sierra Pacific Industries mill site adjacent to the Mad River Slough, and (4) the potential for encountering buried waste materials in the vicinity of the Samoa Ash Landfill site.

Construction Activities

The construction activities that have the potential to discharge pollutants to coastal waters include excavation of the bore pits and the boring process. The construction materials that could potentially contribute to water quality issues include the drilling mud, equipment fuel, bore spoils, concrete, and polymer dust.

As described in Finding A (Project Description and Location), the project consists of installing conduit via the HDD construction method. This trenchless construction method minimizes disturbance by limiting surface disturbance to bore entry/exit pits. The project will involve excavation of approximately 128 bore pits total (approximately 64 along each bore path). To avoid the discharge to coastal waters of pollutants from construction activities, the applicant has proposed various best management practices (BMPs) and avoidance and minimization measures (AMMs) related to soil stabilization, sediment control, tracking control, wind erosion, non-stormwater management, and waste and materials management. In addition, the applicant submitted a Water Pollution Control Program (WPCP) that includes Water Pollution Control Drawings (WPCDs) and a Water Pollution Control Schedule (WPCS) for use by a contractor to plan and implement BMPs. Specific measures included in the WPCP include, but are not limited to, the following:

- Storm drain inlets will be protected;
- Large diameter fiber rolls (straw wattles) will be placed around proposed work areas;
- Silt fencing will be placed as needed;
- Containment areas will be set up for equipment, drilling fluids, and cuttings storage; and
- An emergency spill kit and spill response materials will be immediately on hand if needed.

Special Condition 2-A requires the applicant to undertake development in compliance with the various AMMs and BMPs proposed in the CDP application to protect water quality and surrounding sensitive habitats. Among other requirements of Special Condition 2, **Special Condition 2-A-vii** (Water Pollution Prevention) requires the applicant to ensure all temporary erosion, runoff, and sediment control BMPs are in place in accordance with the approved final Water Pollution Control Plan (and HDD Contingency Plan, discussed below), **Special Condition 2-A-xii** (Spill Prevention) requires that hazardous materials management equipment be available immediately on-hand at the project site, and **Special Condition 2-A-xiv** (Trash/Debris) requires that all trash be properly contained, removed from the work site, and disposed of on a regular basis to avoid contamination of habitat during construction activities. Any debris inadvertently discharged into coastal waters or surrounding habitats shall be recovered immediately and disposed of properly.

Although erosion and sediment control products classified as temporary are designed to degrade with time, several temporary erosion and sediment control products with netting are commonly left in place permanently. The length of time it takes for netting to

begin to degrade depends on the netting composition and the environmental conditions, but the netting can remain intact many years after installation. When plastic netting does eventually fall apart, plastic fragments may be blown or washed into waterways and the ocean, creating an entanglement and ingestion hazard for marine life. Plastic netting also has been found to entangle terrestrial wildlife, including reptiles, amphibians, birds, and small mammals. Therefore, **Special Condition 2-B-i** (Plastic Netting Prohibition) prohibits on the use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers).

Special Condition 7 (Revised Final Water Pollution Control Plan) requires the applicant to submit for the review and approval of the Executive Director a revised final Water Pollution Control Plan that incorporates the added measures required by this permit, such as the plastic netting prohibition measure discussed above. The applicant must undertake development consistent with the approved plan.

Finally, **Special Condition 11** (Debris Disposal Plan) requires submittal of a final debris disposal plan prior to commencement of construction. No specific details on debris disposal have been provided by the applicant, such as the names of authorized disposal site(s) where materials may be lawfully disposed of or a schedule for when materials will be removed from the construction site, as this information normally is determined by the contractor at the time of construction. Thus, in order to avoid potential water quality impacts, Special Condition 11 requires submittal of a plan for the review and approval of the Executive Director for the disposal of excess construction debris and hazardous materials (e.g., contaminated soils and groundwater) that lists the names of all authorized disposal site(s) where materials will be lawfully disposed of and that describes the manner and schedule by which the materials will be removed from the construction site and transported for disposal.

Frac-Out

The HDD construction method uses a clay/water mixture (drilling mud) that is pumped down the drill stem to lubricate the drill head and drill pipe, maintain the bore hole opening, and remove bore cuttings. This method produces a risk of hydraulic fractures, or “frac-outs,” where drilling fluids from the drilling mud are discharged into the environment through fractures and other planes of weakness within the overlying rock bodies. The proposed HDD method could result in an inadvertent frac-out, which could degrade water quality within the project area as a result. In most cases, if fluid loss occurs, the fluid fills the formation voids and fractures and does not reach the ground surface. However, a surface release of sediment and drilling fluids could adversely affect water quality and/or sensitive habitat types.

Frac-outs result from drilling at too shallow a depth below the ground; drilling through brittle, fractured and/or poorly consolidated rocks or sediments; and drilling with fluid pressures that are too high. To address this issue, the applicant submitted both a soils memo and a HDD contingency plan (Exhibit 6).

The soils memo (Appendix A of Exhibit 6) describes the types of soils present and their associated recommendations for drilling pressure. The soil types found along the fiber optic route consist of Occidental (silty clay) and Samoa-Clam Beach Complex (sand). As these are generally homogenous soil types, the probability of hydraulic fractures is low.

Based on site soils, the soils memo discusses the proportions of clay (bentonite) to be mixed with water to form the drilling mud, which is a combination of subgrade soil, water, and clay used as an admixture. To suspend the bore hole and remove soil from the excavation, the contractor pumps the drilling mud into the directional bore's path. At the Mad River Slough crossing the soils contain a stiff silt, but the contractor will encounter sandy soils within a majority of the installation along the Samoa Peninsula. Therefore, as the bore path moves north and east and more silt and clay are encountered, the proportion of clay used in the drill fluid will be reduced. The contractor will adjust the drilling fluid concentration based upon actual field performance.

In addition to adjusting the drilling fluid concentration during construction, the drilling crew will also monitor the drilling fluid pressure, as changes in pressure could lead to a hydraulic fracture. In the event of changes in either fluid pressure or drilling fluid flow at the bore or exit hole, the drill operator will stop the operation and evaluate the condition. The operator will then either pull back the drill string or increase the density of the drilling fluid.

Although the risk of a frac-out is low, drilling problems may occur, and the applicant must be prepared to respond to an accidental release of drilling fluids. Therefore, the applicant proposes to implement the project consistent with a HDD contingency plan that includes measures for prevention, containment, cleanup, and disposal in the event of any accidentally released drilling fluids or drilling mud. **Special Condition 8** (Revised Final HDD Contingency Plan) requires the applicant to submit a revised Final HDD Contingency Plan for the review and approval of the Executive Director that is updated to address residual contamination around the old mill site adjacent to Mad River Slough and potential hazards associated with the Samoa Ash landfill site, as discussed below).

Old Mill Site Residual Contamination

A former timber mill, most recently operated by Sierra Pacific Industries, is located along the west bank of the Mad River Slough north of Highway 255 (Exhibit 2). The mill ceased operation several years ago, but residual contaminants associated with past mill operations are known to occur in soils and groundwater beneath the site. According to a North Coast Regional Water Quality Control Board summary memo dated March 2020, dioxins, furans, and other contaminants remain on site and monitoring is ongoing. The extent of residual contamination is unknown, but samples taken by Humboldt Baykeeper and others in areas east and south of the site, including south of Highway 255, suggest that subsurface contaminants may extend through the portion of the project route adjacent to the old mill site.

According to sediment surveys conducted within Mad River Slough over the last decade, the sediment extends to a depth of 22 feet below mean sea level NAVD88, and the contamination is likely within a depth of 1.5 feet from the surface. Based upon sediment monitoring at the site, sediment levels have changed by less than one foot annually over the last nine years, thus the proposed conduit will likely be placed within materials deposited prior to deposition of toxic materials caused by human activity. The proposed conduit installation will be more than 15 feet below this elevation, at a minimum depth of –38 feet NAVD88.

Although the conduit will be bored sufficiently deep underneath the slough to avoid the contaminated sediments, the drill will pass through shallow soils at the bore entrance and exit pits at this location that may be contaminated and could be mobilized. To minimize the risk of mobilizing contaminants, the HDD contingency plan proposes several measures related to drilling operations, handling of materials, and worker safety. First, the HDD contingency plan provides specific recommendations for monitoring and adjusting the drilling fluid mixture, drilling fluid rate, and hydrostatic pressure during boring operations. Second, the contractor will isolate excavated soils and drilling fluids from operations in this area for special testing and disposal procedures. All materials will be tested by a certified laboratory for chlorinated phenols, phenols, dioxins, and furans in addition to standard tests (i.e., hydrocarbons and metals) to determine whether the excavated soils and fluids must be taken to an authorized disposal site capable of receiving contaminated waste. Finally, the HDD contingency plan specifies that contractor personnel shall implement specific protocols for working near contaminated sites in accordance with Cal/OSHA guidelines, including having personnel trained in Hazardous Waste Operations and Emergency Response (HAZWOPER) and wearing personal protective equipment.

While the measures proposed by the applicant in the HDD contingency plan to minimize the risk of mobilizing contaminants are appropriate, in some cases they do not go far enough to ensure adequate water quality protection consistent with sections 30230 and 30231. For example, as discussed above, no details on excavated soils and fluids disposal have been provided, and this information will be necessary to ensure that the materials are lawfully disposed of at an authorized disposal site(s) capable of receiving such materials. In addition, no provisions have been included to allow for verification of the results of the certified laboratory tests of excess drilling mud for dioxins, furans, etc. by the Executive Director to ensure proper disposal. Moreover, Regional Water Board staff who reviewed the applicant's proposed plan approved the proposed measures as adequate but suggested the plan be updated to specify which specific excavation points (bore pit and manhole numbers, as shown on the construction plans), shall be subject to the special drilling operations and handling measures discussed above.

Therefore, the Commission requires Special Condition 8 and Special Condition 11. **Special Condition 8** (Revised Final HDD Contingency Plan) requires submittal of a revised final HDD contingency plan for the Executive Director's review and approval prior to CDP issuance. The revised final plan shall substantially conform with the proposed HDD Plan dated December 2020 (revised plan submitted January 18, 2021, Exhibit 6), except the plan shall be revised to (1) specify those excavation points (bore

pits, manholes, etc.) in the vicinity of Mad River Slough that are subject to the special measures approved by the Regional Water Quality Control Board for drilling, materials testing and handling, and worker safety to minimize risks associated with exposure to soil and groundwater contaminants, and (2) provide for submittal of the results of the certified laboratory tests of excess drilling mud for dioxins, furans, etc. together with the proposed facilities authorized to receive these wastes to the Executive Director for review and approval prior to disposal or reuse of tested materials. **Special Condition 11**, previously discussed above, requires submittal of a final debris disposal plan prior to CDP issuance.

Potential for Encountering Buried Waste at the Samoa Ash Disposal Site

As discussed in further detail in Finding H (Coastal Hazards) below, the Samoa Solid Waste Disposal Site (Samoa SWDS, also referred to as the Samoa Ash Disposal Site or the Samoa Ash Landfill) consists of a series of buried waste piles associated with the former Louisiana Pacific pulp mill near the southern end of the project area (within the Phase 4 construction segment, see Exhibit 2). The Samoa SWDS is located between the former pulp mill site (now owned by the Humboldt Bay Harbor, Recreation, and Conservation District) and New Navy Base Road. The Samoa SWDS is regulated by the Regional Water Board and by the Humboldt County Division of Environmental Health (County DEH) in its capacity as the local enforcement agency (LEA) on behalf of Cal-Recycle.

The Commission received comments on the CDP application from County DEH with recommendations for measures to be taken for development within 1,000 feet of the Samoa SWDS. The County recommended that a Soil and Waste Excavation and Management Plan be prepared to address soil and waste management around the Samoa SWDS due to the potential for drilling operations to encounter buried waste materials and to lead to the release of odors and dust and the pollution of stormwater runoff that may come into contact with the landfill materials (e.g., if such materials are excavated and stockpiled in the construction corridor). The plan should (1) describe the specific locations, methods, and procedures for staging, stockpiling, managing, and disposing of soil, groundwater, and waste material expected to be encountered during construction; (2) include procedures to manage unanticipated waste types (i.e., municipal solid waste) that may be encountered; and (3) include provisions for characterizing and testing soil, groundwater, and waste material in accordance with California Department of Toxic Substances Control (DTSC) Protocol for Burn Dump Site Investigation and Characterization.

To ensure proper handling and disposal of soil and waste materials consistent with County recommendations, the Commission attaches **Special Condition 10**. This condition requires the development and submittal of a final Soil and Waste Excavation and Management Plan for the Phase 4 segment of construction that has been reviewed and approved by the County DEH and that addresses all the issues discussed above.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, will maintain and protect the water quality of coastal waters in the project area consistent with sections 30230, 30231, and 30232 of the Coastal Act.

F. Environmentally Sensitive Habitat Area

Section 30240 of the Coastal Act states as follows:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas and shall be compatible with the continuance of those habitat and recreation areas.

The majority of the proposed project would be constructed along disturbed roadsides, other sparsely vegetated areas, and in some cases the paved shoulder of the road, and no direct impacts to environmentally sensitive habitat areas (ESHA) are anticipated. However, there are various types of ESHA adjacent to the project area along much of the alignment, including coastal willow thickets, freshwater emergent wetlands, environmentally sensitive nesting habitat for rare, threatened, and endangered species of birds, and rare plant habitat areas; and these ESHAs must be protected against significant disruption of their habitat values. In some areas, development is proposed immediately adjacent to ESHA with little buffer. Therefore, the Commission must evaluate whether the proposed development is consistent with section 30240(b), which requires that development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade adjacent ESHA and that the development be compatible with the continuance of the ESHA.

During project staging and construction, the proposed project has the potential to inadvertently disturb ESHA, including the potential for unintentionally drilling through ESHA, for equipment staging and laydown to impact ESHA, and (as discussed under Finding E, above, regarding water quality) for a frac-out or spill to release sediments, drilling fluids, or other hazardous materials that could impact ESHA. As described above under Finding A (Project Description and Location) and Finding E (Water Quality), the proposed project will excavate a total of 128 bore pits, with a pit located approximately every 800 feet on both sides of the public roadways along the parallel bore routes (FH1 and FH2). Each excavation point consists of between 100 square feet and 220 square feet of ground disturbance. Additionally, as described further below, under Finding G (Archaeological Resources), temporary disturbance will also occur during pre-construction archaeological testing. Disturbance areas include existing paved areas in some cases, but at most points, disturbance will occur to upland, non-ESHA grassy roadside areas. Ultimately, one or two manholes and handholes will be installed at each point. Various types of heavy equipment will be operated during construction and

staged either in the travel lane of the roadway or adjacent to the road in a “rolling” temporary construction corridor.

Based on field surveys and delineation completed by the project consultants, Transcon Environmental, Inc., in its Wetland Delineation and Biological Evaluation reports (dated June 2020 and July 2020, respectively), the bore pits will be sited to avoid ESHA. In some areas, follow-up surveys for Northern red-legged frog, rare nesting birds, and rare plants are recommended to be conducted prior to commencement of construction to ensure that final placements of bore pits avoid all ESHA. The construction phasing map (Exhibit 4) shows which areas require updated pre-construction ESHA surveys (and survey details are discussed further below). As previously discussed, construction will occur in independent segments, offering flexibility in the construction schedule to delay construction in certain areas until the seasonally appropriate surveys for the specific biological resources identified in the construction segment can occur.

In addition to avoiding ESHA impacts and completing updated surveys, the biological and wetland reports recommend various AMMs and BMPs, all of which the applicant has incorporated into the project description. These include, but are not limited to: (1) flagging off the boundaries of work areas and sensitive areas to avoid encroachment into sensitive areas prior to commencement of construction, (2) having a biological monitoring onsite during construction to ensure that activities avoid encroachment into ESHA, and (3) conducting a pre-construction environmental awareness training by the biological monitor to inform construction personnel of the nearby sensitive resources and restrictions on encroachment into sensitive areas, and (4) cleaning of construction equipment prior to bringing the equipment to the work site to minimize the transport of non-native vegetation seeds and plant material. The Commission attaches Special Condition 2-A to require the applicant to undertake development in compliance with the various AMMs and BMPs proposed in the CDP application to protect water quality and surrounding sensitive habitats (Exhibit 7).

Additionally, to prevent establishment of invasive species, the Commission imposes **Special Condition 2-B-ii**, requiring that any disturbed areas be appropriately stabilized and revegetated following construction with regionally appropriate or locally grown or collected native plant seeds that do not include any species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or the State of California. These two additional Special Conditions are necessary to further protect coastal resources beyond what is proposed in the project application.

Updated Biological Surveys

As discussed above, the applicant has proposed to complete updated biological surveys in some construction segments based on the identification of suitable habitat for sensitive species along and adjacent to the proposed project alignment and the recommendations included in the Transcon Environmental, Inc., Biological Evaluation report. The biological report recommends that a qualified biologist shall complete the proposed pre-construction “clearance” surveys for sensitive species of nesting birds, amphibians, and rare plants according to agency recommended survey protocols within

and adjacent to certain construction phase segments. Details on survey requirements for rare amphibians, birds, and plants that have the potential to occur in the construction corridor are discussed below for each.

Sensitive Bird ESHA

The biological report identified a total of 15 rare, threatened, and endangered birds with the potential to be present in the project area for foraging or nesting during proposed construction (which is expected to last for 10 months of the year, beginning in the spring of 2021). Those special-status rare birds with potential nesting habitat in the project area include, but are not limited to, Purple martin (*Progne subis*), White-tailed kite (*Elanus leucurus*), Yellow warbler (*Setophaga petechia*), and Yellow-breasted chat (*Icteria virens*). During nesting season (generally February 15 - August 31), elevated noise from construction could interfere with avian mating and territorial defense calls, possibly inhibiting or delaying breeding. Construction noise and activities and human presence could result in nest abandonment or neglect or could disrupt foraging activity, reducing reproductive success. Direct effects are expected to be short term and temporary while construction and installation pass through a given area and are not expected to extend beyond one breeding season. Long-term effects are not expected, because the project will not modify or remove suitable roosting, hibernation, or foraging habitat for birds, and any soil disturbance will be reseeded to restore roadside vegetation to pre-project conditions. Only minimal vegetation removal will occur.

To ensure that the proposed development in areas adjacent to environmentally sensitive nesting bird habitat areas is compatible with the continuance of the sensitive nesting bird habitat, the Commission attaches **Special Condition 3**. This condition requires the applicant to undertake development in compliance with various proposed measures to protect nesting habitat areas of rare, threatened, and endangered bird species (sensitive bird ESHA) by (1) having a qualified biologist survey the recommended segments for sensitive bird ESHA (i.e., active nesting areas of raptors and rare, threatened, and endangered bird species) in and adjacent to the construction area according to current California Department of Fish and Wildlife (CDFW) recommended survey protocol(s) no more than seven days prior to the commencement of construction within the construction segment; and (2) flagging for avoidance a buffer-zone around any sensitive bird ESHA detected where construction shall be delayed until after the young have fledged. As recommended by Transcon Environmental, Inc., and approved by CDFW in its consultation with Commission staff on the recommended biological protection measures, the construction-free buffer zone shall be a minimum of 300 feet for nesting raptors and a minimum of 100 feet for other special-status bird species.

Northern Red-Legged Frog

The Biological Evaluation report completed by Transcon Environmental, Inc., found aquatic habitat for Northern red-legged frog (*Rana aurora*) is present within much of the surveyed area. Northern red-legged frog requires perennial water for early life stages and breeding. During their adult phases they are rarely found more than a few feet from

these waters. Since much of the proposed project would be constructed along disturbed shoulders of major roads away from suitable habitat for these species, impacts to Northern red-legged frog are expected to be minimal, however permanent water sources are present within and adjacent to the project area, therefore the species may occur within the project alignment. Potential impacts to Northern red-legged frog are greatest where the project would travel under or adjacent to waterways, wetlands, or riparian habitats.

Direct mortality to Northern red legged frog habitat and/or individual frogs could occur in both aquatic and upland dispersal habitat as a result of project-related construction activities. Individuals may be crushed by heavy machinery and vehicles, trampled by personnel, or buried during soil-disturbing activities. If construction occurs during sensitive breeding seasons, noise and ground vibration from construction activities may result in physiological stress to breeding individual, hampering their ability to find mates and reproduce. Soil disturbance during construction could result in sedimentation of nearby waters, lowering water quality through increased turbidity, and thereby indirectly impacting Northern red legged frog. Additionally, a surface release of sediment and drilling fluids via a frac-out near their habitat could kill or injure Northern red-legged frogs, especially in the egg and larval stage through smothering by sediment or toxicity of drilling fluids.

To provide protection to Northern red-legged frog habitat within the project area as proposed by the applicant, **Special Condition 4** requires pre-construction surveys for Northern red-legged frog by a qualified biologist prior to commencement of the segments of the project that include suitable Northern red-legged frog habitat (phases 2 and 3). Specifically, surveys should include areas along the project alignment within twenty-five feet of intermittent waterways that have water present and areas within fifty feet upstream and downstream of the work area. The condition requires that survey results be provided to the Executive Director for review prior to commencement of construction of the construction segment. If Northern red-legged frog is detected during the survey(s), as proposed, the qualified biologist shall consult with CDFW to determine whether to relocate the individual frog(s) to a safe location farther away from construction to minimize the potential for harm to individual animals.

Rare Plant ESHA

Special-status plant surveys conducted in the spring and summer of 2019 and summer of 2020 positively identified several populations of beach layia (*Layia carnosa*) and dark-eyed gilia (*Gilia millefoliata*) at the southern extent of the project alignment, on the Samoa Peninsula.

Direct mortality to special-status plants could occur from project-related construction activities. For example, individual plants could be inadvertently crushed or buried by heavy machinery and vehicles or trampled by personnel. Indirect effects to special-status vascular plants may also occur from project-related activities. Specifically, ground-disturbing activities during construction may cause indirect effects that include disruptions to native seedbank, localized changes to hydrologic conditions, increased

erosion and sediment transport, and the potential introduction of non-native invasive species. Ground-disturbing activities like soil removal, subsequent mixing of topsoil with subsoil, and compaction can degrade soil structure and quality. This often affects the ability of the disturbed soils to sustain basic soil functions like native plant and fungal growth, a healthy soil microbiome, and adequate water infiltration and retention. Consequently, special-status species may not be able to reestablish on these disturbed soils, which often results in the establishment of weedy non-native invasive plants which thrive in disturbed habitats and crowd out native plants.

However, with the implementation of the various proposed BMPs and AMMs described above (environmental awareness training, flagging of sensitive areas, limiting areas of temporary impact, having a biological monitor present, and invasive species prevention), significant impacts to rare plants are unlikely. In addition, as proposed by the applicant, **Special Condition 5** requires completion of pre-construction seasonally appropriate rare plant surveys by a qualified botanist prior to commencement of construction in those construction segments of the project that include potential rare plant habitat. Any rare plants found will be flagged for avoidance, and, as the siting of bore pits and manholes has some flexibility to avoid any resource along the alignment, the project will be able to avoid direct impacts.

The Commission finds that with the various measures proposed by the applicant and required by the special conditions discussed above, the project will be sited and designed to prevent impacts that would significantly degrade environmentally sensitive habitat areas and will be compatible with the continuance of those habitat areas, consistent with section 30240 of the Coastal Act.

G. Archaeological Resources

Section 30244 of the Coastal Act states as follows:

Where development would adversely impact archeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The project area lies within the traditional territory of the Wiki division of the Wiyot Tribe. At the time that Euro-Americans first made contact in this region, the Wiyot lived almost exclusively in villages along the protected shores of Humboldt Bay and near the mouths of the Eel and Mad Rivers. Today, representatives of the Wiyot Tribe include the Table Bluff Reservation Wiyot Tribe, the Blue Lake Rancheria, and the Bear River Band of the Rohnerville Rancheria.

Commission staff consulted with the Tribal contacts recommended by the Native American Heritage Commission (NAHC), and representatives from the three tribes (the Wiyot Tribe at Table Bluff Reservation, the Bear River Band of the Rohnerville Rancheria, and the Blue Lake Rancheria) approved of the proposed measures to protect archaeological resources. Staff also participated in a field walk with Tribal representatives, the applicant, and the applicant's consulting archeologist from

Transcon Environmental, Inc., in February 2021, subsequent to the consultation that the applicant conducted with the Tribal representatives in December 2019.

On December 18, 2019, the applicant's consulting archeologist from Transcon Environmental, Inc., met with representatives of the Blue Lake Rancheria, Bear River Band of the Rohnerville Rancheria, and the Wiyot Tribe at Table Bluff Reservation, completing a field walk during which they discussed the project and potential sensitive locations. The applicant's archeologist formally documented sensitive sites that will be avoided.

A Cultural Resources Inventory Report was prepared for the project by the registered professional archeologist from Transcon Environmental, Inc., in July 2020. The report recommends BMPs and mitigation measures to avoid and minimize project impacts on archaeological resources, including cultural resources awareness training for the construction crew prior to commencement of construction; avoidance of known sensitive sites ("no construction zone" areas); archaeological monitoring in some sites; and an inadvertent discovery protocol.

Subsequent to the development and submittal of the Cultural Resources Inventory Report, further consultation was conducted with the Tribal representatives during which they requested that eight of the proposed bore pits nearest to four previously recorded sites be auger tested for buried deposit prior to construction, as well as two separate points of concern away from proposed bore pits but near suspected sensitive sites located along the alignment. The remaining 63 bore pit locations proposed for the Samoa Peninsula were carefully examined by the Transcon Environmental, Inc., archeologist, and 38 were determined to have an extremely low potential for buried deposits because they are within road fill, at the base of extremely deep road cuts, or on the Pacific Ocean side of the peninsula. The remaining 25 bore pit locations are within areas where no archaeological sites have been previously identified. However, a subset of these bore pit locations may also be subjected to auger testing based on the results of the testing at the initial ten locations and following further consultation with the Tribes.

A Cultural Resources Testing Plan was subsequently prepared by the registered professional archeologist with Transcon Environmental, Inc., and submitted on February 23, 2021 (Exhibit 8). The plan describes the applicant's proposal to conduct soil auguring prior to construction at the locations identified in consultation with the Tribes to ensure in advance that cultural resources are not present and will not be disturbed. The plan includes details concerning examination and handling of the test materials and maps of the specific testing locations.

Archaeological testing will be conducted using a six-inch screw auger attached to a mini excavator or to a rubber-tired backhoe to allow testing of the entire vertical area of potential effect (APE) to a depth of ten feet. As stated under the ESHA finding, above, archaeological testing would not occur in wetlands or ESHA and would be subject to all applicable best management practices and avoidance and minimization measures for sensitive biological resources included in the project proposal.

Test auguring would occur in 50-cm (20-inch) increments, after which the auger would be retracted and the soil “spun off” onto a tarp. This soil would be carefully examined by the archaeological and tribal monitors for evidence of archaeological deposits before the next level was augured. Soils and any artifacts and other cultural constituents identified would be photographed, and recorded for soil color, constitution, lens thickness and depth, and moisture level. Any artifacts identified would be collected for examination by the THPOs; these would later be reburied in the vicinity of the project alignment by them. Afterwards, the loose soil would be shoveled back into the auger hole and tamped down. If the results are inconclusive, additional test auguring may be placed within the same bore pit footprint. If there is positive evidence of buried cultural deposits, Tribal representatives would be notified, and additional auger testing would then be implemented at increments (i.e., of 20 feet) in one or both directions along the alignment until no archaeological resources are discovered by the tests. Bore pit locations will be adjusted with the approval of both the Tribal representative and the Executive Director to avoid both archaeological resources and sensitive habitat areas.

Sensitive/cultural areas will not be flagged to avoid disclosure of the locations of these sensitive/confidential sites. However, in addition to the pre-construction testing of certain sensitive sites, the project proposes to have archaeological and Tribal monitors present during construction to work with the crews to avoid impacts to archaeological resources.

To ensure protection of identified sensitive archaeological resources within the project area, as well as any additional cultural resources that may be discovered at the site during construction of the proposed project, the Commission includes **Special Condition 2-A-iv** (Pre-Construction Archeological Testing), **Special Conditions 2-A-ix** (Archeological Monitoring), **and Special Condition 6** (Protection of Archaeological Resources). Special Condition 2-A-iv will ensure pre-construction archaeological tests are completed and bore pit locations adjusted as necessary consistent with the Cultural Resources Testing Plan submitted February 23, 2021. Special Condition 2-A-ix requires that an archaeological monitor and a Tribal monitor be present in the construction segments mapped and approved by the THPOs of the three Wiyot area Tribes as requiring cultural monitoring to ensure compliance with the required sensitive resource protection measures of this permit. Special Condition 6 requires notification of the Tribal representatives prior to commencement of ground-disturbing activities in order to invite and arrange for a Tribal monitor to be present; requires construction to cease and not recommence within an established buffer zone if additional archaeological resources are discovered during construction until the significance of the find can be analyzed; and requires submittal and approval of a Supplementary Archaeological Plan to the Executive Director before construction recommences within the established buffer zone.

Therefore, the Commission finds that the development is consistent with Coastal Act section 30244, because as conditioned, the development includes reasonable mitigation measures to address adverse impacts to archaeological resources.

H. Coastal Hazards

Section 30253 of the Coastal Act states, in applicable part, as follows:

New development shall do all of the following:

- a. Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- b. Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs ...

The proposed project is located in an area subject to seismic hazards, tsunami inundation, and flooding, which is expected to worsen with projected sea-level rise (SLR) over the estimated 30-year design life of the fiber optic cable development. The project infrastructure, including fiber optic conduit, manholes, and handholes, are subsurface, which reduces flood risk from the standpoint of structural damage from wave uprush, and the fiber optic conduit development is designed to be immersed in the groundwater and saltwater environment. Moreover, no coastal impacts are expected if the conduit becomes severed during an earthquake or other geologic event; and the project will not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.

Another significant hazard issue associated with the project relates to the potential for migration of subsurface methane gas from the closed landfill at the southern end of the project site. The Samoa Solid Waste Disposal Site (Samoa SWDS), as previously discussed, consists of a series of buried waste piles located between the former pulp mill site and New Navy Base Road. The Commission received comments on the CDP application from County DEH with recommendations for measures to be taken for development within 1,000 feet of the Samoa SWDS. The County commented that construction near the landfill site raises the potential for gases such as methane to be mobilized, posing an explosion risk as well as worker health and safety risks both during construction and after construction, during maintenance operations, if gas were to accumulate in manholes in the area. In addition, drilling through, and installing manholes in, incompetent material associated with the landfill could lead to structural instability issues.

To address these hazards and minimize the risks, the County recommends that the applicant prepare a Worker Health and Safety Plan (WHSP) to address the portion of the project within 1,000 feet of the Samoa SWDS. The WHSP should include measures to minimize risks from landfill gases and potential worker exposure to hazardous materials around the Samoa SWDS. The plan should address the potential for the presence and migration of landfill gases during construction and for minimizing risks associated with gas migration; measures to minimize risks of exposure by construction workers to anticipated hazardous materials (e.g., wood ash), to potential unanticipated

waste types (e.g., municipal solid waste), and to potential landfill gas accumulation post-construction by operational and maintenance personnel; and measures to assure project stability and structural integrity associated with any incompetent waste fill material that may be present. **Special Condition 9** requires submittal for the review and approval of the Executive Director of a final WHSP that has been reviewed and approved by County DEH prior to commencement of construction of the Phase 4 construction segment.

Regardless of the avoidance and minimization measures and best practices utilized, because the applicant is electing to undertake new development in an inherently hazardous area, the Commission attaches **Special Condition 12**, which requires the applicant's assumption of risk, waiver of liability, and indemnification of the Commission.

For all the above reasons, the Commission finds that the proposed project, as conditioned, will minimize risks to life and property from geologic and flood hazards consistent with Coastal Act section 30253.

I. Public Access

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 requires that access from the nearest public roadway to the shoreline be provided in new development projects, except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or where adequate access exists nearby. Section 30211 requires that development not interfere with the public's right of access to the sea where acquired through use or legislative authorization. Section 30214 provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. In applying these sections, the Commission considers whether public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

The proposed project will result in temporary public access impacts during construction associated with temporary lane closures for construction equipment working in the project corridor. The affected roads are for the most part two-lane roads. All roads will remain open but will be subject to one-way controlled traffic through the construction area. The duration of construction for the project will be approximately ten months, with progress of about four hundred to six hundred feet per day. Construction operations will be performed five days per week for eight to ten hours per day, with some work beginning before sunrise and/or ending after sunset. In general, the active work zone will be contained within a 1,000-foot-long zone that moves along the corridor daily. Project construction will result in some traffic delays. However, the traffic impacts are not expected to be significant. The roads will remain open and members of the public traveling to coastal access points along the Samoa Peninsula can bypass the construction zone via an alternate route. Highway 255 forms a partial loop connecting with Highway 101 to the east at both Highway 255's southern end in Eureka and its northern end in Arcata. Coastal access users can bypass the construction zone by

traveling along Highway 101 and approaching the coast on Highway 255 coming from the opposite direction.

There is very limited existing parking along Highway 255 except along the southern portion of the alignment where there are pullouts and parking lots for beach access. Project construction will not require closure of any parking lots along the route but may require closure of certain pullouts for a period of up to approximately four hours each time, if needed.

After construction is complete, the project will have no impact on public access to the coast. Therefore, as the temporary construction interference, necessary for worker and public safety, will be limited to a relatively short duration and public coastal access will be maintained along the project corridor for the duration of the project, the Commission finds that the proposed project, as conditioned, will not have a significant adverse effect on public access and is consistent with the requirements of Coastal Act sections 30210, 30211, 30212, and 30214.

J. California Environmental Quality Act (CEQA)

The California Public Utilities Commission, as the lead agency, determined the project to be categorically exempt from environmental review pursuant to sections 15061(b)(3), 15301(b)(c), and 15303(d) of the CEQA guidelines, and statutorily exempt under sections 5304(a)(b)(c)(f), 15304(f), and 15332 of the CEQA guidelines.

Section 13096 of the Commission's administrative regulations requires Commission approval of CDP applications to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirement of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of environmental review under CEQA. (14 CCR § 15251(c).)

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

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

1. CDP Application File No. 1-20-0455
2. County of Humboldt Certified Local Coastal Program
3. City of Arcata Certified Local Coastal Program