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STAFF REPORT: REGULAR CALENDAR

Application No.: 1-20-0559

Applicant: Vero Fiber Networks, LLC

Agent: CSW/Stuber-Stroeh Engineering Group, Inc

Location: Within a 9.5-mile-long stretch of public road rights-of-way primarily along Old Arcata Road and Myrtle Ave. and within portions of other connecting City and County roads from Arcata to Mitchell Heights east of Eureka, Humboldt County

Project Description: Install underground fiber optic cable conduit using horizontal directional drilling and a series of 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 a bore path at least four feet below ground surface along approximately 9.5 linear miles of public road rights-of-way from Arcata to the Mitchell Heights Road area east of Eureka in Humboldt County. This trenchless construction method minimizes disturbance by limiting surface disturbance to bore entry/exit pits and handhole locations. There will be a combined total of approximately 118 disturbance areas ranging in size from 6 to 14 square feet.

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 for sensitive birds, plants, and amphibians, (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.

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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I. Motion and Resolution

Motion

I move that the Commission **approve** Coastal Development Permit Application No. 1-20-0559 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.

Resolution

The Commission hereby **approves** Coastal Development Permit Application No. 1-20-0559 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. Evidence of Legal Ability of Applicant to Undertake Development in the Public Rights-of-Way and Comply with Conditions of Approval.

- A PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, evidence that clearly demonstrates that both Caltrans and the County of Humboldt have agreed that the permittee may undertake development on their respective rights-of-way pursuant to Coastal Development Permit 1-20-0559 as conditioned by the Commission herein. The Caltrans and County agreements shall be signed by authorized representatives from each agency; and
- B PRIOR TO COMMENCEMENT OF CONSTRUCTION WITHIN EITHER THE CALTRANS OR COUNTY RIGHT-OF-WAY, the permittee shall submit for the review and approval of the Executive Director, evidence that the needed encroachment permit for that right-of-way has been obtained from the right-of-way holder, 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 the applicable Caltrans or County right-of-way, as conditioned herein. The permittee shall inform the Executive Director of any changes to the project required by either Caltrans or the County. 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 1/13/2021 (Exhibit 4). Construction within each phase segment (phase 1, 2, and 3) shall proceed consistent with all special conditions of CDP 1-20-0559.
 - 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 (vii) and (viii) 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 (phases 1, 2, and 3), 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 **Flagging of Biologically Sensitive Areas.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF EACH CONSTRUCTION PHASE (phases 1, 2, and 3), 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 not encroach into delineated sensitive areas. Demarcated areas shall be inspected daily throughout construction to ensure that they are visible for construction personnel.
- v **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 not encroach into wetlands, ESHA, and culturally sensitive areas identified by the Biological, Archaeological, and Tribal Monitors.

- vi **Water Pollution Prevention.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF EACH CONSTRUCTION PHASE (phases 1, 2, and 3), 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.
- vii **Biological Monitoring.** A Biological Monitor shall be present on site in construction segments that have delineated sensitive areas per subpart (iv), 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 and shall stop work activities in any area if required to avoid adverse impacts to sensitive resources. The Monitor shall be onsite full-time during 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 (iv) 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.
- viii **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 southern section of phase 2) mapped and approved by the THPOs of the three Wiyot area Tribes as requiring cultural monitoring by an Archaeological Monitor and/or Tribal Monitor 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 and shall stop work activities in any area if required to avoid adverse impacts to sensitive resources.
- ix **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.

- x **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.
 - xi **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.
 - xii **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.
 - xiii **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 9.
- 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 (phases 1, 2, and 3), the permittee shall implement 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 the survey required in subpart A above to the Executive Director, 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 Amphibians.** PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE PHASE 3 CONSTRUCTION SEGMENT, the permittee shall implement all of the following proposed measures:

 - A A qualified biologist shall perform a pre-construction survey for sensitive amphibians (adults, subadults, tadpoles, or egg masses) according to current CDFW recommended survey protocols 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 50 feet of Jacoby Creek and Freshwater

Creek. 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 individuals of any sensitive amphibians are detected during the survey(s), the qualified biologist shall consult with CDFW to determine whether to relocate the animals 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 EACH CONSTRUCTION PHASE (phases 1, 2, and 3), a qualified botanist shall complete seasonally appropriate pre-construction surveys for that phase according to CDFW-approved survey protocols for rare plant ESHA within 15 feet of all areas to be disturbed by construction and adjacent to the construction segment;
- B If rare plant ESHA is detected during the survey(s), PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THAT PHASE, 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 not encroach 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 EACH CONSTRUCTION PHASE. 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, 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 that includes a reasonable buffer zone recommended by the Monitor(s). Construction may continue outside of the exclusion zone.
- C A permittee seeking to recommence construction within the exclusion zone 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 31, 2020 that was subsequently revised and submitted January 18, 2021, except the plan shall be 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. Implement the Final HDD Contingency Plan.** The permittee shall undertake development in accordance with the approved final HDD Plan dated December 2020 (revised plan submitted January 18, 2021, Exhibit 6). 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. Debris Disposal Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and written 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.
- 10. 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), a 1.25-inch-diameter high-density polyethylene fiber optic cable conduit, referenced as BH1, at least four feet below ground surface in approximately 9.5 linear miles of public road rights-of-way from the City of Arcata to the unincorporated Mitchell Heights area east of Eureka in Humboldt County (Exhibits 1-3). From north to south, the project route runs (1) parallel to the eastern side of I St. in Arcata from 8th St.¹ southward to its intersection with 7th St., and then (2) eastward along 7th St. (along the south side until just past G St., at which point the project corridor crosses to the north side of the street) to Union St., and then (3) southward on the east side of Union St. to its intersection with Old Arcata Rd., and then (4) southward along the east side of Old Arcata Road, past the southern boundary of the City at Jacoby Creek Rd., to the intersection of Myrtle Ave. and Indianola Rd., and then (5) southward along the east side of Myrtle Ave. past Indianola Cutoff, and then (6) crossing to the west side of Myrtle Ave. and continuing southward to Mitchell Heights Rd., and finally (7) along the east side of Mitchell Heights Rd. to a point near Ocean Ave. The southern terminus of the project is an existing substation just east of the City of Eureka.

Due to the length of the project area, the construction footprint is divided into three phases or construction segments (Exhibit 4), which are: (1) Phase 1 – two disjunct segments of the project – one at the northernmost end within the City of Arcata and the other at the southernmost end in the Mitchell Heights area east of Eureka; (2) Phase 2 – the majority of the project area between Union Street in Arcata and the intersection of Myrtle Ave. and Mitchell Heights Road, and (3) Phase 3 – two small disjunct segments, one near Jacoby Creek and one near Freshwater Creek, which each require additional biological surveys, as discussed in Finding F (ESHA) below.

The installation process for the fiber optic line involves excavating bore pits every approximately 800 feet along the 9.5-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 handhole locations (handholes, also called pull boxes, are sites where the conduit that will contain the fiber optic cable would be pulled through holes and spliced together).

There would be 38 excavation points along the bore path alignment for 76 handholes (there would be two handholes at each of the 38 points) and 80 excavation points for bore pits. Each excavation point for handholes would permanently disturb up to 14

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.

square feet of ground, and each excavation point for bore pits would temporarily disturb 6 square feet of ground. Ultimately, approximately 1,000 square feet of permanent ground disturbance would result from the combined total of each handhole lid at the ground surface level (each lid would be 3 feet by 4 feet at the ground surface, at a total of 76 points along the project route).

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 mitigate 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 six 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 weekday daylight hours.

B. Environmental Setting

The principal County roads that the project corridor follows (Old Arcata Road and Myrtle Ave.) were originally developed by white settlers in the area as early as 1855.² Prior to that time, the project corridor, which flanks the historic margin of Humboldt Bay, had been utilized for trails and fish camps by the Wiki, who later became known as the Wiyot Tribe.³ Current land use along the proposed project alignment consists primarily of rural residential and agricultural lands. Most of the project alignment closely borders the inland edge of the coastal zone boundary.

Dominant vegetation types include coast redwood forest, annual grassland, and willow-dominated riparian areas around a number of perennial and intermittent waterways, sloughs, and wetlands. The project corridor crosses two major perennial watercourses (Jacoby Creek and Freshwater Creek) as well as various smaller and/or intermittent waterways (Washington Gulch, Rocky Gulch, and Fay Slough). The major streams and their associated wetlands support habitat for a variety of special-status species, discussed in further detail below.

² Transcon Environmental Cultural Resources Inventory. July 2020.

³ Rohde, J. June 2020. Humboldt Bay Shoreline, North Eureka to South Arcata: A History of Cultural Influences. Accessible from: <https://humboldt.gov/DocumentCenter/View/87242/Humboldt-Bay-shoreline-cultural-landscape-investigation-Rohde-2020>

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. The standard of review for a consolidated CDP is Chapter 3 of the Coastal Act.

D. Other Agency Approvals

City of Arcata

As development will occur within City of Arcata right-of-way, a City encroachment permit is required and has been obtained.

County of Humboldt

As development will occur within County of Humboldt right-of-way, a County encroachment permit is required and has not yet been obtained. Therefore, **Special Condition 1-B** requires submittal of the County encroachment permit prior to commencement of construction within the County's right-of-way. If the County's permit requires changes to the project, Special Condition 1-B 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. See also Finding J below.

California Department of Transportation (Caltrans)

A small portion of the project will occur within Caltrans right-of-way (the portion of the project along 7th Street in the City of Arcata that crosses over Highway 101). Therefore, a Caltrans encroachment permit will be required for the project, and that permit has not yet been obtained. Therefore, **Special Condition 1-B** requires submittal of the Caltrans encroachment permit prior to commencement of construction within the Caltrans right-of-way. If Caltrans' permit requires changes to the project, Special Condition 1-B requires that those changes not be incorporated into the project until the applicant obtains an amendment to this CDP. See also Finding J below.

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. The applicant obtained and provided a copy of a CDFW permit for the project dated February 24, 2020 (Notification No. EPIMS-HUM-13723-R1).

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), the roadways in the project corridor cross several creeks, sloughs, and drainage ditches containing wetland vegetation. While the project proposes to avoid direct impacts to these waters and wetlands by strategically locating all excavation points and staging areas outside of such features, and by drilling beneath rather than within these sensitive areas, the project has the potential to impact water quality, aquatic and wetland habitats. The two primary water quality issues raised relate to (1) the discharge of excavated materials, drilling muds, fluids, and other materials from construction activities, and (2) the risk of hydraulic fracturing (frac-out) from horizontal directional drilling.

Construction Activities

The construction activities that have the potential to discharge pollutants to coastal waters and wetlands include excavation of the bore pits and the boring process. The construction materials that could potentially contribute to water quality and habitat

degradation 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 fiber optic conduit via the HDD construction method. This trenchless construction method minimizes disturbance by limiting surface disturbance to bore entry/exit pits and handhole locations where the line is pulled through the pits. The project will involve excavation of 118 excavation points (total number of bore pits and handhole excavation areas). 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 dated 8/31/20; updated and resubmitted 1/18/21) 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 to control stormwater runoff and sedimentation 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 and maintain water quality and surrounding sensitive habitats. Among other requirements of Special Condition 2, **Special Condition 2-A-vi** (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-xi** (Spill Prevention) requires that hazardous materials management equipment be available immediately on-hand at the project site, and **Special Condition 2-A-xiii** (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 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 final plan.

Finally, **Special Condition 9** (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, to avoid potential water quality impacts, Special Condition 9 requires submittal of a plan for the review and approval of the Executive Director for the disposal of excess construction debris 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. All drilling spoils removed from the boring operation are separated with a reclaimer, and the water is re-used in the drilling operation. The solids are temporarily placed on plastic sheeting to dry before being loaded into dump trucks and transported to the disposal facility. The proposed HDD 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 a HDD contingency plan dated December 2020 (Exhibit 6). The plan describes the types of soils present in the project area and their associated recommendations for drilling pressure. The soil types found

along the fiber optic route consist of soil types with higher concentrations of clay and silt, and as such, the probability of hydraulic fractures is expected to be low.

Based on anticipated soils along the drilling route, the HDD plan 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. 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** (Final HDD Contingency Plan) requires the applicant to implement the final HDD Contingency Plan as proposed.

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 Coastal Act sections 30230, 30231, and 30232.

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 that 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) 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 118 excavation points, with a pit located approximately every 800 feet along the public roadway along the bore route (BH1). Each excavation point consists of between 6 square feet (for 80 bore pits) and 14 square feet (for 38 handhole excavation points) of ground disturbance. Ultimately, approximately 1,000 square feet of permanent ground disturbance would result from the combined total of each handhole lid at the ground surface level (each lid would be 3 feet by 4 feet at the ground surface, at a total of 76 points along the project route). Disturbance areas include existing paved areas in some cases, but at most points, disturbance will occur to upland, non-ESHA grassy roadside areas. 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 their Wetland Delineation and Biological Evaluation reports (dated June 2020 and July 2020, respectively), all excavation areas will be sited to avoid ESHA. In some areas, follow-up surveys for rare amphibians, 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 (Exhibit 7), 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 monitor 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. 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. This added special condition is 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 CDFW 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 at least ten 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 six months, beginning in the late spring or early summer of 2021). Those special-status rare birds with potential nesting habitat in the project area include, but are not limited to, Bryant’s savannah sparrow (*Passerculus sandwichensis alaudinus*), 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.

Sensitive Amphibians

The Biological Evaluation report completed by Transcon Environmental, Inc., found potential habitat for three species of rare amphibians in the project area: Northern red-legged frog (*Rana aurora aurora*), Foothill yellow-legged frog (*Rana boylei*), and Southern torrent salamander (*Rhyacotriton variegatus*). 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. Foothill yellow-legged frog are found in rocky streams and rarely are found far from permanent water. Southern torrent salamander are found in well-shaded streams with mature riparian vegetation. Habitat around Jacoby Creek and Freshwater Creek was identified as suitable to support the three species, and the California Natural Diversity Data Base includes documented occurrences of all three species within 1.5 miles of the project corridor.

Since much of the proposed project would be constructed along disturbed shoulders of major roads away from suitable habitat for these species, impacts to sensitive amphibians are expected to be minimal. However, while there will be no development in ESHA, permanent water sources are present within and adjacent to the project area, including areas with mature riparian vegetation, and therefore the species may occur within the project alignment. Potential impacts to sensitive amphibians are greatest where the project would travel under or adjacent to perennial waterways with mature riparian habitats.

Direct impacts to amphibian habitat and/or individual animals 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 individuals, 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 sensitive amphibians. Additionally, a surface release of sediment and drilling

fluids via a frac-out near their habitat could kill or injure the animals, especially in the egg and larval stage through smothering by sediment or toxicity of drilling fluids.

To provide protection to sensitive amphibian habitat areas within the project area as proposed by the applicant, **Special Condition 4** requires pre-construction surveys for sensitive amphibians by a qualified biologist prior to commencement of the segments of the project that include suitable sensitive amphibian habitat (phase 3). Specifically, surveys should include areas within 50 feet of Jacoby Creek and Freshwater Creek, including areas at least 50 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 sensitive amphibians are 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

Rare plant surveys conducted in the spring and summer of 2019 did not locate any species of sensitive plants in the project area, though the surveys did identify suitable habitat for a number of special-status plants. Suitable habitat was identified in the project area for the following rare plant species: Howell's montia (Montia howellii), northern meadow sedge (Carex praticola), Lyngbye's sedge (C. lyngbyei), Siskiyou checkerbloom (Sidalcea malviflora ssp. patula), and coast checkerbloom (S. oregana ssp. eximia).

Direct impacts to rare plants could occur from project-related construction by crushing or burying plants by heavy machinery and vehicles or by trampling of plants by personnel. Indirect effects to special-status plants may also occur from ground-disturbance disrupting native seedbanks, localized changes to hydrologic conditions, increased erosion, 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 previously described (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 updated 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 Coastal Act section 30240.

G. Archaeological Resources

Section 30244 of the Coastal Act states as follows:

Where development would adversely impact archaeological 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.

The applicant conducted a field consultation with Tribal representatives in December 2019. In addition, Commission staff consulted with the Tribal contacts recommended by the Native American Heritage Commission (NAHC), including representatives from the three Wiyot area tribes (the Wiyot Tribe at Table Bluff Reservation, the Bear River Band of the Rohnerville Rancheria, and the Blue Lake Rancheria). The three Wiyot area tribes approved of the applicant's proposed measures to protect archaeological resources (discussed below). Commission staff also participated in a field walk with Tribal representatives, the applicant, and the applicant's consulting archeologist from Transcon Environmental, Inc., on February 9, 2021, as well as a field visit to a portion of the project area corridor within the City of Arcata with the Tribal Historic Preservation Officer for the Blue Lake Rancheria on February 24, 2021.

On December 18, 2019, the applicant's consulting archeologist from Transcon Environmental, Inc. met with representatives of the Wiyot area Tribes, 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. The Cultural Resources Inventory Report, prepared by a registered professional archeologist from Transcon Environmental, Inc., dated July 2020, recommends BMPs and mitigation measures to avoid and minimize project impacts on archaeological resources. Recommended measures include cultural resources awareness training for the construction personnel 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 nine of the proposed excavation locations that are near to or within previously recorded prehistoric sites be monitored by both a Tribal monitor and an archaeological monitor due to the potential for archaeological materials to be unearthed during construction, including items of patrimony or human remains. The Tribal representatives also requested that ten additional excavation sites along the project corridor be monitored by an archaeologist (but not also by a Tribal monitor) during construction to identify any cultural resources that may be present and also assess the geomorphological conditions present. The Tribes did not recommend pre-construction archaeological testing for any of the sites with potentially occurring archaeological resources, and requested that potential sensitive sites not be flagged to avoid disclosure of the locations of these sensitive/confidential sites.

The applicant proposes to include the recommended monitors and other recommended mitigation measures to protect archaeological resources. These measures are included as enforceable permit conditions under Special Condition 2-A-viii (Archaeological Monitoring) and Special Condition 6 (Protection of Archaeological Resources):

Special Condition 2-A-viii 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 by either or both type of monitor to ensure compliance with the required sensitive resource protection measures of this permit.

Special Condition 6 requires notification of the Tribal representatives at least two weeks prior to commencement of ground-disturbing activities 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 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 and handholes, are subsurface, which reduces flood risk from the standpoint of structural damage from flooding, and the fiber optic conduit is designed to be immersed in the groundwater 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. Regardless, because the applicant is electing to undertake new development in an inherently hazardous area, the Commission attaches **Special Condition 10**, 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 six months, with progress of about 400 to 600 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 an 800-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, and the roads will remain open. Project construction will not require closure of any parking lots along the route but may require closure of certain roadside parking spaces 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 construction access and 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. Applicant's Legal Interest in the Properties

Section 30601.5 of the Coastal Act states:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as coapplicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as coapplicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

All of the work for the proposed project will take place in public road rights-of-way that the applicant does not own. As cited above, section 30601.5 requires that prior to CDP issuance, an applicant must demonstrate that it has a legal right, interest, or other entitlement to use the property for the proposed development, including as conditioned by the Commission.

The applicant has obtained an encroachment permit from the City of Arcata but still needs to obtain encroachment permits from Caltrans and Humboldt County. The Caltrans encroachment permit is for a small segment of the project corridor along 7th Street in the City of Arcata that crosses over Highway 101. The County encroachment permit is for the project corridor south of the intersection of Old Arcata Road and Jacoby Creek Road. Because the applicant has not yet obtained and submitted the encroachment permits or any other form of evidence demonstrating the applicant has the authority to undertake the project in the public roads rights-of-way, and because, according to the applicant, it may take some time to obtain the required encroachment permits, the Commission attaches **Special Condition 1-A** requiring the applicant to submit evidence prior to issuance of the CDP that clearly demonstrates that Caltrans and the County have agreed that the applicant may undertake development on their respective properties in compliance with CDP 1-20-0559 as conditioned by the

Commission. Inclusion of Special Condition 1-A will allow the applicant, if they so choose, to commence work in portions of the project along City streets prior to obtaining the required encroachment permits from Humboldt County and Caltrans, provided that the applicant submits, prior to issuance of the CDP, some other form of evidence, other than an encroachment permit, that clearly demonstrates that Caltrans and the County have agreed that the applicant may undertake development on their respective properties pursuant to this CDP as conditioned by the Commission. Special Condition 1-A requires the evidence to be submitted for the Executive Director's approval. In addition, **Special Condition 1-B** requires the applicant to submit a copy of the applicable encroachment permit prior to commencement of construction within each respective area for which encroachment permits are required (i.e., submit a copy of the Caltrans permit prior to commencement of construction of the portion of the project along 7th Street in Arcata that crosses over Highway 101, and submit a copy of the County encroachment permit prior to commencement of construction south of Jacoby Creek Road) and inform the Commission of any project changes required by Caltrans and the County. If there are no project changes, the encroachment permits could potentially serve as the evidence of authority to undertake development on their property in compliance with CDP 1-20-0559 required by Special Condition 1-A.

The Commission thus finds that as conditioned, the development is consistent with the requirements of Coastal Act section 30601.5.

K. 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 requirements 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 that 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.

1-20-0559 (Vero Fiber Networks, LLC)

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

1. CDP Application File No. 1-20-0559
2. County of Humboldt Certified Local Coastal Program
3. City of Arcata Certified Local Coastal Program