

Decision **DRAFT DECISION OF COMMISSIONER BROWN**
(Mailed 6/20/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion into the programs, practices and policies related to implementation of the California Environmental Quality Act as it applies to jurisdictional telecommunications utilities.

Rulemaking 00-02-003
(Filed February 3, 2000)

**OPINION MODIFYING THE COMMISSION'S APPLICATION
OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT
TO TELECOMMUNICATIONS UTILITIES**

Summary

This decision continues the process of implementing necessary changes to the Commission's application of the California Environmental Quality Act (CEQA) to telecommunications utilities. The changes are designed to more closely align the Commission's practices with the current requirements and policies of CEQA, and to ensure that the application of CEQA in the area of telecommunications does not create competitive disparities.

An Assigned Commissioner's Ruling (ACR) issued on April 26, 2006 set forth a proposal for a streamlined environmental review process for all telecommunications carriers, called the CEQA Expedited Treatment Process

(ETP) for telecommunications.¹ We endorse the ETP (with modifications), and establish a workshop process that will further refine the ETP and lead to its implementation via a new General Order.

Under the ETP, a carrier will submit a proposal to Commission staff for construction activities it believes are exempt from CEQA, and Commission staff will review that proposal on an expedited basis. Any carrier who wishes to perform construction activity that is not exempt from CEQA would be required to seek a Permit to Construct, similar to the Permit to Construct required under General Order (GO) 131-D for construction of electric transmission facilities.

In this, decision we clarify and modify the proposal set forth in the ACR. Specifically, we take the following steps:

- Clarify the relationship between CEQA review and competitive fairness;
- Modify the ETP to reduce the likelihood of “piecemealing” (the improper division of a large project into smaller pieces for purposes minimizing environmental review);
- Create a category of construction, repair, and maintenance activities that are exempt from the ETP because they have no significant environmental impact; and
- Establish a process for the development and issuance of a new General Order implementing the ETP.

CEQA and Competition

This Rulemaking was initiated in part to respond to concerns about the wide variation in the level of environmental review required for different types of telecommunication providers. For most incumbent local exchange carriers

¹ The ACR is attached as Appendix A to this decision.

(ILECs), such as AT&T (the former SBC) and Verizon, whose authority to operate and construct facilities predates the enactment of CEQA, the Commission performs no environmental review of any of their construction projects, no matter how large. For competitive local exchange carriers fortunate enough to apply for a CPCN from approximately 1995 through most of 1999, the Commission also performs no ongoing environmental review of construction projects within the limitations of those carriers' CPCNs,² again regardless of the scale or location of the construction. Non-dominant inter-exchange carriers, and competitive local exchange carriers certificated after 1999 generally received (and continue to receive) individualized project-specific environmental review under CEQA. In short, the Commission's past environmental review practice placed widely varying burdens on different telecommunications providers, and the disparities are also ongoing. (See, Comments of AboveNet Communications, pp. 2-3.)

In this decision, we level the CEQA treatment for telecommunications providers regulated by the Commission. We do not want our CEQA compliance requirements to be so uneven that they create competitive disparities; at the same time, it is not appropriate to use CEQA as a tool to attempt to counterbalance other competitive advantages or disadvantages. Our purpose here is to make sure that our CEQA regime does not itself tilt the competitive playing field. To the extent that the playing field is tilted for reasons beyond CEQA, it is also beyond the scope of this proceeding.

² The primary limitation placed on these carriers, via a Mitigated Negative Declaration (MND) that accompanies the CPCN, is that their construction is limited to existing utility rights-of-way, and is subject to standardized mitigation measures required by the MND.

Parties should not look to this proceeding to remedy all possible competitive disparities. For example, a new market entrant who wishes to lay conduit will need to undergo a CEQA review in order to dig trenches, while an incumbent who already has fiber in the ground does not. The focus of CEQA and this proceeding are on environmental impacts, and all we can do is ensure fair treatment going forward. Neither CEQA nor this proceeding can remove those advantages held by incumbents, particularly if the incumbents need not cause as much disturbance to the physical environment as a new entrant.³

However, as ClearLinx points out, to the extent our new process replaces multiple local reviews with a uniform statewide review, it also helps to level the competitive playing field:

Localized CEQA review would also create an onerous and disproportionate burden on new market entrants and smaller carriers whose projects and operations are on a limited scale. These carriers do not have the government relations and regulatory compliance resources that are routinely deployed by dominant incumbent local exchange carriers (“ILECs”) that operate in, and have regular dealings with, virtually all municipalities in the state. Moreover, carriers such as ClearLinx that provide service using a distributed antenna system (“DAS”), typically have construction projects that are smaller in scale and have a lesser impact on any single municipality than the larger scale projects of the dominant carriers. Nevertheless, these projects frequently involve more than one municipality. Thus, having the ability to obtain centralized CEQA review from a state agency is critical to providing a level playing field for new market entrants such as DAS carriers. (Reply Comments of ClearLinx, p. 2.)

³ A properly administered CEQA regime may in fact provide an advantage to an incumbent carrier that does not need to do as much construction as a new entrant.

This decision does not address issues relating to cell sites and mobile telephone switching offices, which are subject to our GO 159-A. To the extent that a wireless telecommunications carrier regulated by this Commission constructs facilities other than cell sites or mobile telephone switching offices, this decision does apply, as such construction is beyond the scope of GO 159-A. Finally, this decision does not apply to entities that are not subject to this Commission's jurisdiction, such as cable television providers not certificated by this Commission.

Consistency With CEQA

A number of comments received in response to the ACR addressed the consistency with CEQA of the proposal contained in the ACR. Some parties, primarily the incumbent local exchange carriers AT&T and Verizon, recommended that local governments, such as cities and counties, would be more appropriate lead agencies for CEQA than the state, on the grounds that telecommunications projects are generally local in nature.

The determination of the proper lead agency for a project under CEQA is to be made on a project-specific basis. (CEQA Guideline 15051.) While our proposal to implement a new discretionary approval may have the result that the Commission acts as lead agency for more projects, that is not a requirement of the proposal. Many telecommunications projects may in fact be statewide, or extend across multiple local jurisdictions, in which case state-level CEQA review would be more appropriate than multiple, and potentially inconsistent, local CEQA processes.⁴ ClearLinx correctly observes that:

⁴ In some cases, the local government may be the lead agency. For example, if a city is performing an environmental review of a new development, it may be appropriate for that review to include construction of telecommunications facilities to serve that

Footnote continued on next page

Shifting CEQA review to local jurisdictions will almost certainly lead to non-uniform results, as each local jurisdiction administers its own CEQA review process according to a different process, with different timelines, criteria and resources. Such multi-jurisdiction review would be especially problematic for projects that extend across jurisdictional boundaries, so that different portions of the same project would be subject to varying review. (Reply Comments of ClearLinx, pp. 1-2.)

For any particular project subject to the Commission's discretionary review, the Commission may be the lead agency or a responsible agency. (CEQA Guidelines 15050-15053.)⁵ In developing our General Order, we intend to follow the suggestion of the California Attorney General: "The Commission could, in a General Order, distinguish categories of projects for which it would expect to act as responsible agency, deferring to local jurisdictions, from the types of projects (perhaps multi-jurisdictional) for which it would expect to act as lead agency." (Reply Comments of Attorney General on Draft Decision, pp. 5-6.)

The Attorney General also points out that the proposal contained in the ACR "could lead to piecemeal consideration of projects that should be reviewed together, as a whole." (Comments of Attorney General, p. 2.) This is a valid concern, and we modify our approach to require that a carrier identify in the ETP application reasonably foreseeable future phases, or other reasonably foreseeable

development. In such a case, the Commission would probably have the role of a responsible agency.

⁵ NextG Networks argues that telecommunications carriers have a legal right to install facilities in public rights-of-way, and that cities are barred from requiring discretionary permits for access to rights-of-way. (Comments of NextG, pp. 6-7, Reply Comments of NextG, p. 4.) If NextG is correct, then requiring local governments to act as lead agencies under CEQA, as proposed by AT&T and Verizon, would in fact result in no CEQA review.

consequences, of its proposed construction.⁶ In addition, we will adopt part of the Attorney General's recommended modification, requiring a carrier to also identify all expansions to its network undertaken in the same geographic region within the past two years, where geographic region is defined as the county in which the proposed construction will occur and any adjacent counties. (Id. p. 4.)

Some parties, including Level 3, argue that the ETP process is inconsistent with CEQA by essentially requiring an "environmental review" for projects that are exempt from CEQA. According to Level 3, carriers would be required to provide more information than is necessary for Commission staff to make a determination whether a project qualifies for an exemption.

The Commission does in fact need to have enough information not only to determine whether a project is subject to an exemption, but also whether an exception to an exemption applies. Public Resources Code section 21084 and CEQA Guideline 15300.2 identify situations in which categorical exemptions may not be used, including particularly sensitive environments, significant cumulative impacts, significant environmental effects due to unusual circumstances, possible damage to scenic resources within state scenic highways, hazardous waste sites, and possible adverse changes in the significance of a historical resource. Merely finding that an exemption appears to be applicable is not enough; the Commission staff needs enough information to determine

⁶ We believe this approach more realistically reflects the nature of the telecommunications industry, as compared to the forward-looking part of the Attorney General's recommended modification, which would require a carrier to identify in the ETP application "all expansions to its network undertaken in the same geographic region...anticipated to occur within the next two years." (Id., p. 4.)

whether an exemption is appropriate for the specific project, and the ETP is designed to provide that information.

The ETP ensures that use of an exemption is appropriate, and that the applicability of an exemption is based upon adequate analysis. Given the intense competitive pressures that can be present in the telecommunications market, telecommunications providers may have an incentive to underestimate the environmental impacts (and the corresponding environmental review process) of their projects. Ultimately, the responsibility for compliance with CEQA rests with the Commission, not the applicant, and we take this responsibility seriously.⁷

The ETP functions by requiring some upfront analysis by applicants, allowing for a faster turnaround by staff. If applicants provided less information and analysis, then Commission staff would need to perform the analysis, slowing the approval process. At the same time, however, it appears that the requirements of the ETP could be further refined to align it more precisely to CEQA and the needs of the Commission.⁸ We direct the Assigned Commissioner and ALJ to hold workshops addressing the type and amount of information required to be submitted under the ETP.

Several parties note that CEQA review is triggered by a discretionary decision by a public agency, and argue that the ETP creates a stand-alone environmental review that is inconsistent with CEQA. (See, e.g., Comments of

⁷ In addition, we do not want any carrier to gain an unfair competitive advantage by falsely claiming to be exempt from CEQA.

⁸ For example, the Attorney General points out that it is appropriate to differentiate between categorical exemptions and statutory exemptions from CEQA. (Reply Comments of Attorney General on Draft Decision, pp. 3-4.)

SureWest Telephone, pp. 1-2.) This decision does not create a stand-alone environmental review. Instead, it creates a new discretionary decision in a limited set of circumstances, consisting of the determination whether to issue a permit to construct, analogous to our existing permit to construct for electric projects under GO 131-D.⁹ In reviewing an application for a permit to construct, the Commission has the discretion to mitigate environmental damage caused by the project, and to otherwise modify or condition the proposed project, or in the most extreme case, stop the project entirely.

Any and all construction activity in the area of telecommunications is now subject to the requirement for a permit to construct, but we have also crafted exceptions to this requirement (discussed in more detail below) that should encompass the vast majority of all construction activity. In short, most construction activity will not require a permit to construct.

A number of carriers make varying arguments based upon the assumption that the new process will slow the deployment of telecommunications infrastructure. (See, e.g., Comments of SureWest, pp. 3-4.) For those carriers who currently perform no environmental review prior to construction, the ETP may result in a slight delay during which they would consider the environmental consequences of their actions in a manner consistent with California law. Other carriers, however, note that the current system imposes significant delays in construction for some carriers (particularly new entrants) based on the happenstance of the date or category of their CPCN. (Comments of AboveNet, pp. 1-2; Comments of ClearLinx, pp. 1-2.)

⁹ The ACR requested party comments addressing the process for obtaining a permit to construct (p. 6), but few were received.

The proper approach is to look at telecommunications infrastructure as a whole, rather than by which individual carriers gain or lose in relation to the status quo, as any change will result in “winners” and “losers.” For all carriers, our new approach will provide clarity, regulatory certainty, and fairness, and will reduce the risk of delay due to litigation.¹⁰ Finally, our modification of the ETP to provide for an “out” for certain construction, repair and maintenance activities (discussed below) addresses the main cause of potential delay, which was the over-inclusive nature of the ETP as proposed in the ACR. As modified, the ETP ensures that California’s telecommunications infrastructure is built not only in a timely manner, but consistent with the law and without degradation of California’s environment.

Some carriers advocate for continued or expanded use of the pre-1999 batch mitigated negative declaration process. (See, e.g., Comments of Time Warner Telecom.) That process was made unavailable to new entrants for the simple reason that it did not comply with CEQA. (See, D.99-12-050 and D.99-10-025.) Accordingly, it would be contrary to statute (and counterproductive) to attempt to reintroduce it now. Similarly, allowing companies holding CPCNs with batch MNDs to continue to build under those MNDs, while not allowing new entrants similar treatment, fails to address the competitive disparities this Rulemaking was intended to remedy.

Process

The ACR stated that: “Carriers should submit a proposal to Commission staff under the ETP for all construction activities they believe are exempt from

¹⁰ Particularly litigation alleging that the Commission’s processes are inconsistent with CEQA.

CEQA.” A number of parties pointed out that “all construction activities” encompasses a potentially vast number of activities, including those that unquestionably have no environmental impact. This observation is correct. The scope of the ETP needs to be narrowed. Accordingly, we will exempt certain activities from the ETP.

An approach we have used since 1999, sometimes referred to as “limited facilities-based” authority, exempts specific construction activities from environmental review by the Commission. Under the limited facilities-based approach, installation of equipment in existing buildings or structures, such as placing a switch in an existing building, or pulling fiber through existing conduit, does not require an environmental review. (See, Comments of NextG Networks, pp. 2-3, citing D.03-01-061 and D.06-01-006.) For example, a carrier was granted limited facilities-based local exchange authority, “restricted to the use of unbundled network elements (UNEs) and the placement of equipment within or on previously existing buildings and structures,” but was “prohibited from engaging in any construction of buildings, towers, conduits, poles, or trenches.” (See, D.01-08-013, citing D.99-10-025.)

There is one ambiguity in this approach, however. The Commission has found that it can be seen with certainty that there is no possibility of adverse environmental impact if construction activity is “limited to installing equipment in existing buildings and structures.” (Id., emphasis added.) However, in another part of the same decision¹¹, the Commission states that it is allowing “the

¹¹ This particular decision is merely an exemplar – the same language appears in multiple Commission decisions.

placement of equipment within or on previously existing buildings and structures.” (Id., emphasis added.)

For purposes of this proceeding, we find that placement of equipment in existing buildings and structures does not require use of the ETP process. The question of whether to also allow placement of equipment on existing buildings and structures outside of the ETP is more difficult, as the answer tends to be more fact-dependent. For example, placement of an 18-inch antenna dish on the side of an existing building would not have the same visual impact as placement of an 18-foot antenna dish on that building. Similarly, stringing new aerial conduit on existing poles through an industrial area is not the same as stringing new aerial conduit on existing poles along coastal stretches of Highway 1 or across sensitive wetlands.

While we do not wish to create a loophole in our CEQA review process that could result in no review of projects that could cause significant environmental impacts, requiring the ETP process for all activities involving placement of equipment on existing buildings and structures would not be appropriate, as it would encompass a massive number of activities that have no significant environmental impact. (See, Comments of AT&T, supra.) It is, however, possible to chart a course between these two obstacles. We will not require use of the ETP for construction activities consisting of the placement of equipment on existing buildings and structures, but only if: (1) that activity results in no significant visual impact, and (2) that activity does not take place on or adjacent to a particularly sensitive environment.¹² In addition, construction

¹² Examples of particularly sensitive environments include, but are not limited to, endangered species habitat, wetlands, and known cultural heritage sites.

activity without an environmental review is not allowed when any of the conditions identified in CEQA Guideline 15300.2 are present.¹³

We agree that requiring the use of the ETP process for all construction activities would put a large and unnecessary burden on both telecommunications providers and Commission staff, as many construction activities do not require environmental review under CEQA. We will use the above criteria to create an exception to the use of the ETP process. Accordingly, if a carrier wishes to place equipment in an existing building or structure, it need not seek Commission approval through the ETP process to do so, and if it wishes to place equipment on an existing building or structure, and meets the more detailed requirements set forth above, it need not seek Commission approval through the ETP process to do so.¹⁴

This change makes the construction approval process for telecommunications projects very similar to the process we use for electric projects under GO 131-D. Under GO 131-D, distribution-level projects generally need no Commission review, smaller transmission-level projects require a Permit to Construct (consisting primarily of a CEQA review), and larger transmission-level projects require a CPCN and accompanying CEQA review. While the dividing lines between categories are necessarily different for telecommunications projects, the general approach is analogous.

¹³ Those conditions are: particularly sensitive environments, significant cumulative impacts, significant environmental effects due to unusual circumstances, possible damage to scenic resources within state scenic highways, hazardous waste sites, and possible adverse changes in the significance of a historical resource.

¹⁴ This approach relies upon the good faith of carriers to comply with the requirements of the new process. We do, however, anticipate incorporating compliance and enforcement mechanisms in an applicable General Order.

AT&T points out that the ACR does not distinguish new construction from routine repair and maintenance in public rights-of-way, such as replacing poles. (Comments of AT&T, p. 13.) The repair and maintenance of existing facilities in general should have less of an environmental impact than the construction of new facilities, but we cannot assume that this is always the case.¹⁵ We will apply essentially the same criteria to repair and maintenance activities as we do for new construction; however, we anticipate that more repair and maintenance activities will fall within that criteria than will new construction activities.

To clarify how this will work, carriers need not use the ETP for performing repair and maintenance work (either routine or emergency) on existing facilities, including replacement of equipment within existing structures, replacement of above-ground structures with structures the same dimensions or smaller, and replacement of poles with new poles of similar size and capacity. Again, this exception to the ETP is only available if the activity results in no significant visual impact, and 2) that activity does not take place on or adjacent to a particularly sensitive environment.¹⁶ Unless there are existing mitigation measures covering repair and maintenance imposed by an earlier CEQA review, repair and maintenance without an environmental review is not allowed when any of the conditions identified in CEQA Guideline 15300.2 are present.

In Comments on the Draft Decision, several parties pointed out inconsistencies or ambiguities in the criteria for the exceptions to the ETP. For

¹⁵ For example, replacement of existing poles in a sensitive wetland may have a greater environmental impact than new trenching in a less sensitive area.

¹⁶ Examples of particularly sensitive environments include, but are not limited to, endangered species habitat, wetlands, and known cultural heritage sites.

example, Sprint pointed out that while the Draft Decision allows for routine repairs without a carrier going through the ETP, no such exception was made for emergency repairs. (Comments of Sprint on Draft Decision, pp. 9-10.) We have expanded the exception to include all repairs. Nevertheless, we want to ensure that the criteria used for exceptions to the ETP make sense and are workable and consistent with CEQA. Accordingly we will also order workshops to be held to clarify the exceptions to the ETP.

Some parties appear concerned that incumbent carriers could gain a competitive advantage by upgrading their existing system and offering additional services under the guise of repair, maintenance, and equipment replacement. (See, Comments of Level 3.) According to this argument, the incumbents could essentially get a new system while undergoing less CEQA review than a new entrant. This may, in fact, be true, but our focus here is on equitable application of CEQA. If the construction activities of the incumbents cause no significant environmental harm, while the construction activities of new entrants do cause significant environmental harm, the Commission's CEQA review should reflect those realities. This proceeding is about CEQA, and is not an appropriate forum to redress any and all perceived competitive imbalances.

SCE recommends that instead of requiring the signature of a corporate officer, the ETP proposal should be certified under penalty of perjury by an individual who has first-hand knowledge of the project and who has specific delegated authority to represent the carrier. Under SCE's proposal, that individual may be an officer or another management-level employee. (Comments of SCE, pp. 8-9.) We adopt SCE's recommended change.

Confidentiality

A number of parties raise concerns about the level of information disclosure required by the ACR's proposal. Specifically, carriers are concerned that competitors, including competitors not subject to Commission regulation, could gain competitively sensitive and valuable information as a consequence of the public disclosure of construction plans. This is a valid concern, as some of the information at issue could indeed constitute trade secrets. At the same time, the policy of the Commission and of CEQA is to favor public disclosure and open decision-making.

The most precise way to balance these two concerns is through an individualized, case-specific review, in which a carrier could request that specific information be kept confidential. That request would then be considered under the Commission's policies and practices for handling confidential information. (See, Public Utilities Code Section 583 and GO 66-C.) While such an approach would assure a proper balancing of the competing needs for confidentiality and public disclosure, it is cumbersome, and inconsistent with the idea of an expedited review process.

While the record does contain some recommendations for how to address this issue (see, Comments of Southern California Edison Company, pp. 5-6), it is presently inadequate for us to develop an approach that does a good job of balancing the needs for disclosure and confidentiality in the context of an expedited process. Accordingly, we direct the Assigned Commissioner and ALJ to hold workshops on this issue to develop an appropriate process for treatment of confidential information under the ETP.

General Order

The ACR indicated an intent to present a new General Order to the Commission with this decision, but given the complexity and importance of the

General Order, it appears more advisable to develop it more carefully, with the benefit of additional party input.

Accordingly, we direct the Assigned Commissioner and ALJ, in coordination with Energy Division and Legal Division, to hold workshops on the issues identified above, specifically the type and amount of information required under the ETP, the criteria for exceptions to the ETP (including identification of projects for which a local jurisdiction would act as lead agency), and confidentiality of information under the ETP. After the workshops are held, a workshop report, including a draft General Order, shall be issued for comment. The ETP and permit-to construct process will be implemented upon the Commission's adoption of the General Order.

In order to provide proper incentives for the parties' participation in the workshop process In order to provide proper incentives for the parties' participation in the workshop process, if the workshop report and draft General Order are not issued within 90 days of today's decision, the ETP process as currently described will operate in lieu of a General Order until a General Order is written and adopted by the Commission.¹⁷

Comments on Draft Decision

The draft decision of the Assigned Commissioner was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7. Comments were received from NextG, SureWest, a group of small LECs, AT&T, Sprint, Verizon, DRA, CCTA, Level 3, SCE and Time Warner. Reply Comments were received from AT&T, SureWest, and the Attorney General.

¹⁷ The assigned Commissioner and ALJ may, by joint ruling, extend this deadline once, for no more than 30 days.

AT&T and Verizon repeat their argument that CEQA review of telecommunications projects should be left to local governments, in large part because telecommunications projects are essentially local in nature. (See, e.g., Comments of AT&T on Draft Decision, pp. 6-7.) As previously discussed, this is inconsistent with CEQA, and is also inconsistent with much of the construction of telecommunications infrastructure.

As described in the Broadband Deployment in California, adopted by this Commission in D.05-05-013:

Verizon has announced plans to deploy FTTP [Fiber-To-The-Premises] over the next 10 to 15 years throughout its nationwide operating system. SBC has also recently announced plans to invest \$4 billion dollars over the next three years to build a fiber network using both Fiber to the Node (FTTN), [fn. omitted] and FTTP technologies. SBC expects to reach 17 million homes with FTTN and 1 million homes with FTTP by 2007..." (D.05-05-013, Attachment A, p. 67.)

These do not appear to be local projects. In addition, even a cursory look at past Commission decisions shows many projects that are not local projects, including D.00-08-017 (authorizing Williams Communications to construct fiber optic systems between Riverside and San Diego), and D.00-08-016 (authorizing Level 3 to construct a fiber optic network including approximately 2,000 miles of cable, stretching from the Oregon border to Sacramento, where it divides into two legs that then go on to the Mexican border).¹⁸

Furthermore, local CEQA review is inconsistent, and in some instances, nonexistent. Based on its experience in a relatively rural area, Tejon Ranch states

¹⁸ GST, in its March 15, 2000 Comments in this proceeding also mentioned their long haul route from Ontario to San Diego, which required permitting from twelve municipalities. (Id., p. 8, fn. 20.)

that: “[L]ocal municipal and county agencies do not undertake CEQA review of telecommunications utilities’ construction activities.” (Comments of Tejon Ranch Company, March 15, 2000, p. 5.) Tejon Ranch speculates that this is because the local permits may be ministerial rather than discretionary.

Finally, local CEQA review is more likely to favor the ILECs, such as AT&T and Verizon. According to GST, local governments often allow ILECs to build with far less environmental review than is required of CLECs: “Both Riverside County and the City of San Diego, for example, allow ILECs to excavate without undergoing the normal permit procedure required of CLECs.” (Comments of GST, March 15, 2000, p. 8.) In short, the position of AT&T and Verizon may have more to do with maintaining their competitive advantage than with supporting sound environmental policies.

In its Reply Comments, the Attorney General rebuts the ILECs’ claim that the ETP process is duplicative of local review, but notes that there may be situations in which it is appropriate for the local jurisdiction to act as lead agency. Consistent with the Attorney General’s recommendation, we intend to develop a General Order that distinguishes categories of projects for which the Commission would act as lead agency from projects for which a local jurisdiction would act as lead agency. (Reply Comments of Attorney General on Draft Decision, pp. 5-6.)

Several parties make arguments based on Public Utilities Code Section 1001, relying on that statute for the proposition that the Commission is statutorily barred from exercising discretionary authority over certain types of

construction or extension of facilities. (See, e.g. Comments of Sprint on Draft Decision, pp. 2-4)¹⁹

Section 1001 requires utilities to obtain CPCNs prior to constructing facilities, but exempts certain categories of construction from the statute. Specifically section 1001 only provides, “This article shall not be construed to require” a utility to obtain a CPCN for extensions within its service territory.

While Section 1001 does not *require* utilities to obtain CPCNs, it does not prevent the Commission from imposing approval requirements on utility construction. Section 1001 only exempts extensions from the Section 1001 requirements; it does not provide that the extensions are exempt from approval requirements generally, or from any other requirement. In fact, the Commission

¹⁹ Public Utilities Code Section 1001 reads:

No railroad corporation whose railroad is operated primarily by electric energy, street railroad corporation, gas corporation, electrical corporation, telegraph corporation, telephone corporation, water corporation, or sewer system corporation shall begin the construction of a street railroad, or of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations, or for an extension into territory either within or without a city or city and county contiguous to its street railroad, or line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business. If any public utility, in constructing or extending its line, plant, or system, interferes or is about to interfere with the operation of the line, plant, or system of any other public utility or of the water system of a public agency, already constructed, the commission, on complaint of the public utility or public agency claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable.

has imposed extra approval requirements in many different situations, including GOs 131-D and 159, and in CPCN decisions that require additional approvals before future expansions (see, e.g., D.02-12-013, D.00-08-017).

The Commission has general authority to impose these requirements on utilities pursuant to Public Utilities Code Sections 701, 761, 762, 762.5. Our requirement that carriers obtain a permit to construct for certain projects is not inconsistent with Section 1001, and in fact it is consistent with both the statute and long-standing Commission practice.

Time-Warner and CCTA, both citing to *Friends of Westwood, Inc. v. City of Los Angeles*, 191 Cal. App. 3d 259 (1987), claim that the Commission lacks the authority to make a discretionary decision that would trigger CEQA, as CEQA review only applies to discretionary decisions. (Public Resources Code section 21080.)

Time Warner argues that the Commission cannot make a discretionary decision for carriers who received their CPCNs before 1999, because these carriers have already had a discretionary review by the Commission, and the Commission “cannot impose a new process on these pre-1999 certificated carriers where discretionary review has already occurred.” (Comments of Time Warner on Draft Decision, p. 2.) Time Warner fails to support its claim that the Commission essentially gets only “one bite at the apple” when it comes to discretionary reviews.²⁰ In fact, Time Warner’s argument, while seemingly based on CEQA, is largely the same as the argument based on Section 1001, and

²⁰ Time Warner cites to the *Friends of Westwood* case, but that case analyzes the nature of discretionary versus ministerial decisions, and does not support an argument limiting an agency to one discretionary decision for a particular applicant.

similarly lacks merit. As the Attorney General points out, “CEQA does not limit a state agency’s capacity to create a new discretionary permitting process within the confines of its own authority and jurisdiction, or to extend the reach of an existing permit process.” (Reply Comments of Attorney General on Draft Decision, p. 2.)

CCTA argues that: “There is no doubt that a permit to construct will issue, if the Commission staff determines that there is no substantial environmental impact.” (Comments of CCTA on Draft Decision, p. 3.) While this argument somewhat misconstrues the permit to construct process, it is essentially an argument that the permit to construct is a ministerial, rather than discretionary decision. In other words, since the Commission will always approve a permit to construct, it is shown to be a ministerial project. This, however, is not the standard for determining whether a project is ministerial or discretionary. The standard is not whether the Commission chooses to always say “yes,” but whether the Commission could choose to say “no.”

The *Friends of Westwood* case cited by CCTA has an extended discussion about the difference between discretionary and ministerial decisions, which states in part:

To properly draw the line between "discretionary" and "ministerial" decisions in this context, we must ask why it makes sense to exempt the ministerial ones from the EIR requirement. The answer is that for truly ministerial permits an EIR is irrelevant. No matter what the EIR might reveal about the terrible environmental consequences of going ahead with a given project the government agency would lack the power (that is, the discretion) to stop or modify it in any relevant way. The agency could not lawfully deny the permit nor condition it in any way which would mitigate the environmental damage in any significant way. The applicant would be able to legally compel issuance of the permit without change. Thus, to require the preparation of an EIR would constitute a useless -- and indeed wasteful -- gesture.

Conversely, where the agency possesses enough authority (that is, discretion) to deny or modify the proposed project on the basis of environment consequences the EIR might conceivably uncover, the permit process is "discretionary" within the meaning of CEQA. Indeed one court held it sufficient when the only "discretion" an agency possessed was to delay a project even though it could not reject or modify the project. (*San Diego Trust & Savings Bank v. Friends of Gill* (1981) 121 Cal.App.3d 203...)

Accordingly, the question here is whether the city had the power to deny or condition this building permit or otherwise modify this project in ways which would have mitigated environmental problems an EIR might conceivably have identified. If not, the building permit process indeed is "ministerial" within the meaning of CEQA. If it could, the process is "discretionary." It is also discretionary if the city possessed the power to require another form of approval- in addition to the building permit-which could have been denied or conditioned on the basis of the EIR, but chose not to. (*Friends of Westwood, supra*, at 272-273.)

Here the Commission possesses the authority to deny or modify a proposed project on the basis of environment consequences that a CEQA document such as an EIR might reveal, indicating that the permit-to-construct process is "discretionary" within the meaning of CEQA.²¹ CCTA's argument is without merit.

CCTA also argues that: "Even if the ETP process were separate and distinct from CEQA, which it is not, CEQA guidelines section 15268 creates a presumption that the issuance of building permits is a ministerial act."

²¹ The Attorney General understands that the Commission's proposed permit-to-construct process is discretionary. (Reply Comments of the Attorney General on Draft Decision, p. 2.)

(Comments of CCTA on Draft Decision, p. 3) The *Friends of Wilshire* case again directly refutes this claim:

CEQA [tit. 14, Cal. Admin. Code] section 15268, subdivision (b) provides: "In the absence of *any* discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be *presumed* to be ministerial:

"(1) Issuance of *building permits . . .*" (Italics added.)

A cursory reading of this guideline could lead one to conclude the Office of Planning and Research considers building permits to be "*presumptively* ministerial." However, on more careful reading it is apparent the presumption arises *only* where a precondition exists -- the public entity must retain *no* discretion in connection with issuance of the building permit. But if the ordinances governing building permits contain "*any* discretionary provision" the presumption is not just dissolved; it simply fails to come into existence. (*Friends of Westwood, supra*, at 269-270, emphasis in original.)

Level 3 and Verizon argue that the draft decision failed to perform the type of economic analysis they claim is required by Public Utilities Code Section 321.1, which states that the Commission should "assess the economic effects or consequences of its decisions." (See, Comments of Level 3 on Draft Decision, p. 9.)

We note that the genesis for this decision is, in large part, the severe competitive disparities caused by our inconsistent application of CEQA to telecommunications providers, as discussed above. Our past practice has resulted in adverse economic effects, creating significant barriers to entry to the telecommunications market in California. Accordingly, the very purpose of this decision is to address specific economic effects and consequences, and to remedy

the adverse economic effects and consequences of our past decisions (in addition to aligning our practices more closely with California law).

As discussed above, AboveNet and ClearLinx (in their Comments in response to the ACR) identify the anti-competitive nature of our existing CEQA practices (and specifically identify the competitive harm that they suffered). The record before us is adequate to provide the basis for a policy-level economic assessment appropriate for this policy-level decision. Section 321.1 does not require us to consider the potential adverse economic impact on specific individual carriers. (See, D.05-05-016, denying rehearing of D.04-12-056.) Our analysis and findings constitute an economic analysis sufficient to satisfy Section 321.1. (See, D.04-12-056.)

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Peter V. Allen is the assigned Administrative Law Judge for this proceeding.

Findings of Fact

1. Different telecommunications carriers are subject to widely varying certification and associated environmental review requirements by the Commission.
2. The Commission's variable application of the environmental review requirements under CEQA in the area of telecommunications has contributed to competitive disparities.
3. Consistent application of the environmental review requirements under CEQA in the area of telecommunications will reduce competitive disparities.
4. The Commission uses a Permit to Construct process for review of electric transmission projects under GO 131-D.

5. The Commission is responsible for compliance with the environmental review requirements under CEQA.

6. Some construction projects in the area of telecommunications may be exempt from CEQA.

7. Many construction, repair, and maintenance activities in the area of telecommunications unquestionably have no significant environmental impact.

Conclusions of Law

1. The Commission's application of CEQA in the area of telecommunications should be modified to be more consistent, so as not to contribute to competitive disparities.

2. Consistent application of CEQA in the area of telecommunications requires the establishment of a new process for Commission review and approval of construction, repair, and maintenance activities.

3. A Permit to Construct process, similar to that used for electric transmission projects under GO 131-D, can be used for review of telecommunications projects.

4. Any modifications to the Commission's application of CEQA must be consistent with law.

5. The Commission should establish a process to determine whether specific construction projects in the area of telecommunications are exempt from CEQA.

6. Construction, repair, and maintenance activities in the area of telecommunications that unquestionably have no significant environmental impact should not be subject to environmental review under CEQA.

O R D E R

IT IS ORDERED that:

1. The Commission establishes the CEQA Expedited Treatment Process (ETP) for telecommunications, effective upon adoption of a new General Order, as described above.

2. The Commission establishes the Permit to Construct (PTC) process, effective upon adoption of a new General Order, for review and approval of telecommunications construction activities not eligible for the ETP.

3. Construction, repair, and maintenance activities in the area of telecommunications that unquestionably have no significant environmental impact do not require review under either the ETP or PTC process.

4. We direct the Assigned Commissioner and Administrative Law Judge to hold workshops to refine the requirements of the ETP, clarify the criteria for exceptions to the ETP, and develop an appropriate process for treatment of confidential information under the ETP.

5. We direct the Assigned Commissioner and Administrative Law Judge to issue a workshop report, including a draft of a new General Order to implement this decision, no later than 90 days from today.

6. If the workshop report and draft General Order are not issued within 90 days of today's decision, the ETP process as currently described will operate in lieu of a General Order until a General Order is written and adopted by the Commission.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion into the programs, practices and policies related to implementation of the California Environmental Quality Act as it applies to jurisdictional telecommunications utilities.

Rulemaking 00-02-003
(Filed February 3, 2000)

ASSIGNED COMMISSIONER'S RULING REQUESTING COMMENTS

Summary

This ruling sets forth a proposal for an improved application of the California Environmental Quality Act (CEQA) to Commission proceedings relating to telecommunications. Specific and detailed comments are requested to allow us to refine this proposal.

The process described in this ruling has two fundamental goals. The first is to further improve the Commission's compliance with CEQA in the area of telecommunications. The second is to eliminate the unfair disparities among telecommunications providers created by the Commission's present CEQA processes. The process set forth below meets both of these goals. It does so by basing the environmental review for a project on the specific construction that is

proposed, subsequent to issuance of a Certificate of Public Convenience and Necessity (CPCN).¹

Background

In California there is presently a significant disparity in the quality and quantity of the environmental review performed on telecommunications infrastructure construction. Some telecommunications providers have been authorized to build essentially anything, anywhere, without a discretionary decision from this Commission that would trigger a CEQA review.

Others, who received what was known as the “batch mitigated negative declaration,” have been authorized to build statewide, within existing utility rights-of-way, although there is some variation in the requirements imposed by the various batch negative declarations.² While the Commission stopped issuing batch negative declarations in late 1999 (see D.99-12-050), carriers holding them are still building facilities under their requirements. Other carriers, including many that obtained their CPCNs after late 1999, received individual and project-specific CEQA review.

This multiplicity of environmental standards is problematic both from a CEQA standpoint and from a competitive fairness standpoint. The CEQA review provided does not match the construction that is going on. A company building almost nothing may have received greater environmental review than a

¹ The proposed process would not alter the process for obtaining a CPCN, including any environmental review necessary for obtaining a CPCN. The process proposed here would apply to all construction activity that occurs after the issuance of a CPCN, and that did not receive CEQA review in the CPCN application process.

² There is also some uncertainty as to the precise meaning of the term “right-of-way.”

company laying fiber statewide. Or two companies engaged in almost identical physical construction may be subject to very different environmental compliance regimes. This is neither a sound practice for protecting the environment nor for competitive fairness.

For example, under past Commission practice, all facilities-based CLECs received essentially the same level of environmental review (via the batch negative declaration), regardless of what they were planning to build. Such undifferentiated environmental review is not a good fit with CEQA, as some companies may receive less environmental review than warranted by their actual construction projects, while others may be burdened with more environmental scrutiny than needed.

The Solution

Regardless of the approach we ultimately adopt in this proceeding, it must be applicable across the board, to all telecommunication providers. If our new approach applies only to CPCNs issued after a decision in this proceeding, we will only extend the regulatory hodge-podge, carrying forward all of the existing flaws and inequities, and adding yet another new layer to the regulatory sediment.

The solution is to tie our CEQA review to Commission approval of the actual construction (and accompanying environmental effects) that a particular telecommunications provider is planning to undertake, subsequent to their obtaining a CPCN. Accordingly, I intend to present the following proposal to the full Commission. This proposal would apply to all telecommunications

providers regulated by the Commission, regardless of the nature of their CPCN or its date of issuance.³

This approach provides a level playing field among all telecommunications carriers, and ensures that our CEQA review matches the actual construction that is proposed.

Other Approaches

I have considered other approaches than the one proposed here. For example, one possibility would be to do a tiered system, roughly analogous to the approach taken for electric projects under our General Order (GO) 131-D. Under GO 131-D, electric transmission projects above 200 kV require the utility to obtain a CPCN from the Commission, projects between 50 kV and 200 kV require a simpler Permit to Construct, while projects under 50kV do not require Commission approval.

While I have borrowed aspects of GO 131-D for this proposal (such as its use of public notice and the permit-to-construct concept), its basic structure is less suitable for telecommunications than for electric transmission and distribution, as the physical size (and corresponding environmental impact) of telecommunications infrastructure does not vary the same way that electric infrastructure does.

Proxies for environmental impact, such as length of fiber laid, or other linear measurements, are not a good measure of environmental impact, as they ignore the nature of the environment through which the fiber passes. Similarly, categorizations based on the general nature of the environment have proved

³ This proposal would be embodied in a new General Order.

problematic as well, with registered cultural heritage sites being found in existing utility rights of way and urban roadways. Considering both aspects at an appropriate level of detail would require analysis not too different from a CEQA document, such as an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND).

Some parties may argue that for the Commission to develop a tiered approach applicable to telecommunications projects (e.g. some activities are exempt, some get standardized mitigations, some require specific environmental review), the Commission would need to prepare a program-level EIR.⁴ A program-level review could have several benefits. It would provide a more complete review of potential effects (including cumulative impacts) and alternatives than an individual review of each carrier's construction activities, and could avoid some duplication of efforts that would occur under individual review of each carrier.

While this approach may have some merit, it does not appear to be appropriate for the current environment of rapidly changing technologies and markets. A program EIR would be quite complex, and would require a significant amount of time and effort to prepare; given the shifting context and complexity of the process, the end product may or may not ultimately prove to be useful. Such a lengthy approach of such uncertain value simply does not provide a prompt answer to the pressing problems facing both this Commission

⁴ According to the CEQA Guidelines, "A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project..." (14 CCR 15168(a)) Generally, these actions are related either geographically or as logical parts of a chain, but they could also be related "in connection with the issuance of rules or regulations governing the conduct of a continuing program..." (14 CCR 15168(a)(3))

and the participants in California's rapidly changing telecommunications market. If there is strong and broad-based support expressed for a program EIR, the Commission may consider preparing one in the future, but it does not appear to be a feasible alternative at this time.

Another possible approach would be to essentially eliminate all discretionary review by the Commission of telecommunications infrastructure construction. This approach would level the playing field by equalizing environmental review at the lowest possible level, which is currently available only to the incumbent local exchange carriers. This approach would result in a radical decrease in our level of environmental review of telecommunications projects in California. Such an evisceration of environmental review is inconsistent with our obligations under CEQA.

The Process

I propose that the Commission adopt a streamlined environmental review process for all telecommunications carriers. This process will be called the CEQA Expedited Treatment Process (ETP) for telecommunications. This process is designed to accommodate only construction projects that are exempt from CEQA review. Carriers should submit a proposal to Commission staff under the ETP for all construction activities they believe are exempt from CEQA. Any carrier who wishes to perform construction activity that is not exempt from CEQA must seek a permit to construct.⁵

⁵ Similar to GO 131-D for electric projects, the permit to construct process would consist primarily of the necessary review under CEQA. The Commission does not need to reexamine the financial or technical qualifications of the carrier, nor make a finding of need for the proposed project. Parties should comment on how they envision the process of obtaining a permit to construct.

Carriers can determine the scope of what they wish to include in their proposals under the ETP; one proposal may include more than one project, or a project that extends over a period of time.⁶

Before submitting a proposal to the Commission staff under the ETP, all carriers should perform a rigorous self-assessment to ensure that the process is appropriate for their proposed construction activity. The first step in that process is for carriers to consider whether any of the following conditions are present:

- a. there is reasonable possibility that the activity may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies; or
- b. the cumulative impact of successive projects of the same type in the same place, over time, is significant; or
- c. there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. (CEQA Guideline 15300.2)

If any of these conditions are present, the ETP process is not appropriate, and a proposal for a permit to construct should be filed instead. If a proposal is submitted to staff under the ETP, and it is found that these conditions are present, the proposal will be rejected.

After that initial self-assessment, carriers shall submit an ETP proposal to the Commission's Energy Division⁷. Carriers are urged to prepare a thorough,

⁶ Carriers should not seek overly long-term approvals, as environmental conditions may change over time, rendering use of an exemption no longer appropriate. Similarly, proposals including too many different projects increase the risk of having the proposal rejected.

clear, complete, and accurate proposal. Given the short review time for the proposals, a high-quality proposal is more likely to be approved than one that is sloppy or incomplete.

A complete copy of the ETP proposal must be posted to the carrier's web site, in an easily findable location, no later than the day that the carrier submits its ETP proposal to the Energy Division.

The proposal shall contain the following:

- A detailed description of the proposed project, including:
 - The precise location of the proposed construction project
 - Regional and local site maps
 - Physical location of the customer(s) to be served, including street addresses.
- A description of the environmental setting, to include at a minimum:
 - General terrain and significant features
 - Cultural, historical, and paleontologic resources
 - Biological resources
 - Current land use and zoning
- A construction workplan, to include:
 - Pre-Construction Survey Checklist⁸ – Archaeological Resources
 - Pre-Construction Survey Checklist – Biological Resources
 - A detailed schedule of construction activities, including site restoration activities
 - A description of construction/installation techniques, including equipment to be used

⁷ The Commission's CEQA review functions have been consolidated in Energy Division for all industries regulated by the Commission.

⁸ Both Archeological and Biological Resource Checklists are attached as Appendix A.

- A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information
- A list of permits required for the proposed project
- A statement of the CEQA exemption(s) applicable to the proposed project, including citations to the CEQA Guidelines
- Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable
- Descriptions of all environmental research performed, and who that research was performed by, including contact information
- Contact information for the carrier
- A working link to the location on the carrier's web site of the complete copy of the proposal.
- Proof of service of the following notices: service by e-mail (w/delivery receipt) or direct mail to the planning agency of the city and county where each activity is located; service by e-mail (w/delivery receipt) or direct mail to the land owner, if other than the carrier, on whose land the activity will occur; and publication in a newspaper of general circulation in the county where the activity will be located, no later than the date the proposal is tendered to the Energy Division. All such notices shall provide a clear description of the project, and shall include contact information for the carrier and for the Energy Division, and shall state the deadline for protesting the proposal.
- Signature, under penalty of perjury, of an officer of the carrier
- Energy Division will review the proposal for the proposed project(s) to confirm that the claimed exemption(s) from CEQA are applicable, and will arrange for the link to the proposal to be posted to the Commission's web site
- Within 7 days of receipt of an ETP proposal, Energy Division will provide "early bad news" if, upon initial review of proposal, there are obvious reasons why the proposal is not appropriate for the ETP process. Within 21 days from the date of Carrier's submittal Energy Division will issue either:

- A Notice to Proceed, and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research; or
 - A Letter of Denial stating the specific reasons why the project cannot be approved under the ETP, including an explanation of why any claimed CEQA exemption(s) are not applicable
 - Carrier shall not engage in any construction activity prior to receiving a Notice to Proceed.
- Protests must be submitted to Energy Division within 10 days of the date the link to the proposal appears on the Commission's web site. If a protest is submitted, at the end of the 21-day review period the Energy Division may approve the proposal, deny the proposal, or request one or more parties to provide additional information. If additional information is requested, Energy Division has 21 days from the date Energy Division receives all requested information to approve or deny the proposal.
 - The carrier may remove the proposal from its web site, and the Commission may remove the link to the proposal from its web site, no sooner than 30 days after a Notice to Proceed and Notice of Exemption is issued by Energy Division, and no sooner than 10 days after a Notice of Denial is issued by Energy Division.

As described above, I intend to place a draft decision and General Order before my colleagues that incorporate this type of streamlined environmental review process for all telecommunications carriers. Detailed comments will be helpful in assessing both the policy approach and the implementation details.

IT IS RULED that:

1. Respondents shall file and serve comments on the proposal described in this ruling no later than May 12, 2006.
2. Interested parties may file and serve comments on the proposal described in this ruling no later than May 12, 2006.
3. Respondents and interested parties may file and serve replies to the comments on the proposal described in this ruling no later than May 19, 2006.

4. Anyone not currently on the service list for this proceeding who wishes to be added to the service list shall send a request via e-mail, no later than May 8, 2006, to the Commission's Process Office (ALJ Process@cpuc.ca.gov) and the assigned ALJ (pva@cpuc.ca.gov).

5. All parties should follow the electronic service protocols set forth in Rule 2.3.1.

Dated April 26, 2006, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown
Assigned Commissioner

APPENDIX A

California Public Utilities Commission

Preconstruction Survey Checklist – Archaeological Resources

Date: _____

Name of Applicant: _____

Utility ID: _____

Location (Address, Provide Map): _____

Route Description: _____

Area Description:

- Urban
- Suburban
- Rural

Photo Documentation: Yes No

Substrate:

- Asphalt/Concrete
- Soil
- Other: _____

Archaeological Resources:

- Yes No CHRIS Records Search
- Yes No Request NAHC contact list and query Sacred Lands File
- Yes No Contact Parties on the NAHC list by letter and phone (identify concerns and sites)
- Yes No Site visit/survey (identify architectural, historic, and prehistoric resources)

Notes and Recommendations: _____

California Public Utilities Commission
Preconstruction Survey Checklist – Biological Resources

Date: _____

Name of Applicant: _____

Utility ID: _____

Location (Address, Provide Map): _____

Route Description: _____

Area Description:

- Urban
- Suburban
- Rural

Photo Documentation: Yes No

Substrate:

- Asphalt/Concrete
- Soil
- Other: _____

Biological Resources:

- | | | | | | |
|------------------------------------|------------------------------|-----------------------------|-----------------|------------------------------|-----------------------------|
| CNDDDB Search | <input type="checkbox"/> Yes | <input type="checkbox"/> No | Raptors Present | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| T&E Species Present | <input type="checkbox"/> Yes | <input type="checkbox"/> No | Burrows | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Riparian Vegetation (List Spp) | <input type="checkbox"/> Yes | <input type="checkbox"/> No | | | |
| Tree Removal Needed? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | | | |
| Nests Present (birds present? Spp) | <input type="checkbox"/> Yes | <input type="checkbox"/> No | | | |

Notes: _____

Consultation Required? Yes No (If yes why?) _____

Water Resources and Wetlands:

- | | | | | | |
|-------------------|------------------------------|-----------------------------|----------------------|------------------------------|-----------------------------|
| Drainages Present | <input type="checkbox"/> Yes | <input type="checkbox"/> No | Wetlands Present | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Lake or Pond | <input type="checkbox"/> Yes | <input type="checkbox"/> No | Delineation Required | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Notes: _____

Permits Required:

- | | | | | | |
|------------------------|------------------------------|-----------------------------|---------------------------|------------------------------|-----------------------------|
| USACE | <input type="checkbox"/> Yes | <input type="checkbox"/> No | NMFS | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| RWQCB | <input type="checkbox"/> Yes | <input type="checkbox"/> No | USFWS | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| CDFG | <input type="checkbox"/> Yes | <input type="checkbox"/> No | Regional Air Quality | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| State Lands Commission | <input type="checkbox"/> Yes | <input type="checkbox"/> No | Local Counties and Cities | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the Notice of Availability is current as of today's date.

Dated June 20, 2006, San Francisco, California.

/s/ ERLINDA PULMANO

Erlinda Pulmano

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