

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

SUBSEQUENT MITIGATED NEGATIVE DECLARATION

LEVEL (3) COMMUNICATIONS INFRASTRUCTURE PROJECT APPLICATION FOR MODIFICATION OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY A.99-06-028

INTRODUCTION

Pursuant to the California Public Utilities Code Section 1001, Level (3) Communications, LLC ["Level (3)"] filed an application for a permit to construct a fiber optic network within the State of California. The project, known as the Level (3) Communications Infrastructure Project (project, or network) entailed the installation of approximately 2,000 miles of telecommunications cable within the State.

In accordance with the California Environmental Quality Act (CEQA), the California Public Utilities Commission (CPUC), acting as Lead Agency, completed an Initial Study for the proposed project. The Initial Study concluded that potential impacts of the project could be mitigated to a level of less than significant through identified mitigation measures and the environmental commitments made by Level (3) as part of the project's design. A Mitigated Negative Declaration (Negative Declaration IX) was subsequently completed for the project.

Following completion and circulation of Negative Declaration IX, the CPUC issued Decision No. 98-03-066 (Decision), dated March 26, 1998, and granted Level (3) a Certificate of Public Convenience and Necessity (CPCN) to provide telecommunications services to the public as a facilities-based, competitive local exchange carrier. The Decision allowed Level (3) to begin construction of the project within existing utility ROWs, subject to certain conditions and the environmental mitigation measures specified in Negative Declaration IX (Appendix D of the subject Decision).

According to the measures specified under "All Environmental Factors" of Negative Declaration IX, a Petition to Modify (or "Application for Modification of") the CPCN must be filed to obtain approval for activities outside of existing ROWs. To address this requirement, Level (3) prepared and submitted a Proponent's Environmental Assessment (PEA) on May 21, 1999 as part of a filing for an Application for Modification to its CPCN. This original Application addressed the proposed construction of 40 off-ROW project elements, and was subsequently revised several times as described in Sections 1 and 2 of the attached Initial Study. The Final PEA for the off-ROW project elements was filed by Level (3) on January 24, 2000, and reflects the construction of 21 off-ROW project elements.

As allowed by CPUC Rule 17.1, the Final PEA was designed to enable the Commission to quickly focus on the potential impacts of the project's off-ROW elements, and may also be used as an aid in preparing the Commission's Initial Studies to evaluate these impacts. Pursuant to CEQA requirements,

an Initial Study for each of the off-ROW project elements described in Section 1.1 of the attached Initial Study has been prepared to determine if its construction or operation will have a significant effect on the environment. These checklists are provided as Appendix A thereto. A master Initial Study checklist has additionally been prepared to assess the overall effect of the proposed off-ROW work sites; it is located in Section 4.3 of the attached Initial Study.

PROJECT DESCRIPTION, LOCATION, AND PROPONENT

As referenced above, the proposed off-ROW project elements will be owned and operated by Level (3) Communications, LLC. A description of the proposed off-ROW project elements is provided in Section 2 of this document. Site-specific details for each of the proposed project elements are provided in Sections 1 through 11 of each element's Initial Study (Appendix A of the Initial Study circulated for public and agency review, dated April 10, 2000). In summary, the proposed off-ROW elements that are the subject of this environmental review include:

- Nine Facilities within existing structures on developed sites
- Five Facilities on the existing foundations of demolished or removed structures on developed sites
- Two Facilities on vacant developed sites
- Three Facilities on disturbed undeveloped sites
- Two workarounds (fiber optic cable re-routes).

Figure 2 of the attached Initial Study provides a map of all of the network's proposed support facilities, including the 21 off-ROW facilities that are addressed herein.

MITIGATION MEASURES

Three suites of mitigation measures are applicable to the proposed off-ROW project elements addressed in this review. They include Level (3)'s environmental commitments, the mitigation measures of Negative Declaration IX, and the mitigation measures identified in the attached Initial Study. They are as follows:

LEVEL (3) ENVIRONMENTAL COMMITMENTS

The environmental commitments that Level (3) has incorporated into the project as part of its design are summarized in Section 2.5 of the attached document, and are additionally found in the resource-specific sections of the Initial Study circulated for public and agency review, dated April 10, 2000. In summary, these commitments include:

- ·Measures to avoid or minimize potential impacts to various resources
- ·Commitment to obtain all approvals and permits required for construction and operation of the project
- ·Coordination and/or consultation with local and resource management agencies
- ·Notifications to adjacent property owners
- Coordination with other utility projects in the area
- ·Documentation and reporting of compliance measures.

NEGATIVE DECLARATION IX

The mitigation measures specified by Negative Declaration IX are as follows, and would be applicable to the proposed off-ROW elements addressed in the attached Initial Study:

All Environmental Factors

If a proposed project extends beyond the utility right-of-way into undisturbed areas or other right-of-way, Level (3) shall file a Petition to Modify its Certificate for Public Convenience and Necessity (CPCN). (“Utility right-of-way” means any utility right-of-way, not limited to only telecommunications utility right-of-way.) An appropriate environmental analysis of the impacts of these site-specific activities shall be done.

If the projects remain within the utility right-of-way, the following mitigation measures are recommended:

General Cumulative Impacts

In the event that more than one petitioner seeks modifications or additions to a particular locality, Level (3) shall coordinate their plans with each other, and consult with affected local agencies so that any cumulative effects on the environment are minimized. These coordination efforts shall reduce the number and duration of disturbance to existing utility right-of-way. Regardless of the number of petitioners for a particular locality, Level (3) shall consult with, and abide by the standards established, by all applicable local agencies. Each petitioner shall file a quarterly report, one month prior to the beginning of each quarter that summarizes the construction projects that are anticipated for the coming quarter. The summary will contain a description of the type of construction and the location for each project so that the local planning agencies can adequately coordinate multiple projects if necessary. The reports will also contain a summary of Level (3)’s compliance with all of the projects listed. The quarterly reports will be filed with the local planning agencies where the projects are expected to take place and the Commission’s Telecommunications Division. The Commission filing will be in the form of an informational advice letter. Subsequent quarterly reports shall also summarize the status of the projects listed in previous quarterly report, until they are completed.

Geological Resources

Level (3) shall comply with all local design construction and safety standards by obtaining all applicable ministerial permits from the appropriate local agencies including the development and approval of erosion control plans. These shall be developed and implemented for areas identified as particularly unstable or susceptible to erosion. If more than one petitioner plans to excavate sensitive areas, coordination of their plans shall be necessary to minimize the number of disturbances. Level (3)’s compliance with this mitigation measure shall be included in its quarterly report.

Water Resources

Level (3) shall consult with all appropriate local, state and federal water resource agencies for projects that are in close proximity to water resources, underground or surface. Level (3) shall comply with all applicable local, state and federal water resource regulations including the development of site-specific mitigation plans should the projects impact water quality, drainage, direction, flow or quantity. If there is more than one petitioner for a particular area that requires excavation, coordination plans shall be required to minimize the number of disturbances. Level (3)'s compliance with this mitigation measure shall be included in its quarterly report.

Air Quality

Level (3) shall develop and implement appropriate dust control measures during excavation as recommended by the applicable air quality management district. Level (3) shall comply with all applicable air quality standards as established by the affected air quality management districts. If there is more than one petitioner for a particular area that requires excavation, coordination plans shall be required to minimize the number of disturbances. Level (3)'s compliance with this mitigation measure shall be included in its quarterly report.

Transportation and Circulation and Public Services

Level (3) shall coordinate their efforts to install fiber optic cables or additional conduits so that the number of disturbances to the utility rights-of-way are minimized. These coordination efforts shall include affected transportation and planning agencies to coordinate other projects unrelated to Level (3) s' projects. For example, review of a planning agency's Capital Improvement Plan (CIP) to identify impacted street projects would be an expected part of the coordination effort by Level (3). Besides coordinating their efforts, Level (3) shall abide by all local construction, maintenance and safety standards (and state standards, if applicable) by acquiring the necessary ministerial permits from the appropriate local agency and/or Caltrans (if within State right-of-way). Examples of these permits are excavation, encroachment and building permits. Appropriate construction start and end times, and dates if appropriate, shall be employed to avoid peak traffic periods, especially if Level (3) s' work encroaches upon transportation rights-of-way. Notice to the affected area (surrounding property owners and occupants) shall be given at least two weeks in advance of the construction. The notice will provide the time and dates of the proposed construction and discussion of potential impacts on traffic and circulation. Level (3) shall consult with local agencies on appropriate restoration of public service facilities that are damaged by the construction and shall be responsible for such restoration. The notice required for mitigation measures F and H shall be consolidated. Level (3)'s compliance with this mitigation measure shall be included in its quarterly report.

Hazards

Level (3) shall use the Transportation and Circulation mitigation measure and augment it by informing and consulting with emergency response or evacuation agencies if the proposed project interferes with routes used for emergencies or evacuations. The coordination effort shall include provisions so that emergency or evacuation plans are not hindered. If the project results in an increase in overhead communication lines, Level (3) shall obtain the necessary ministerial permits to erect the necessary poles to support the lines. The Commission shall include these facilities as part of its overhead line regular inspection so that the requirements of G.O. 95 are met. Level (3)'s compliance with this mitigation measure shall be included in its quarterly report.

Noise

Level (3) shall abide by applicable local noise standards and shall inform surrounding property owners and occupants, particularly school districts, hospitals and the residential neighborhoods, of the day(s) when most construction noise would occur if Level (3) plans excavation, trenching or other heavy construction activities which would cause any significant noise. Notice shall be given at least two weeks in advance of the construction. The notice required for mitigation measures F and H shall be consolidated. Level (3)'s compliance with this mitigation measure shall be included in its quarterly report.

Aesthetics

All applicable local aesthetic standards will be addressed by Level (3) for all facilities that are aboveground, in particular all types of service boxes or cabinets. The local land use agency shall be consulted by Level (3) so that any site-specific aesthetic impacts are assessed and properly mitigated by Level (3). For example, this may include restoration of the landscaped utility rights-of-way. Petitioner's compliance with this mitigation measure shall be included in its quarterly report.

Cultural Resources

Level (3) shall conduct appropriate data research for known cultural resources in the proposed project area, and avoid such resources in designing and constructing the project. Should cultural resources be encountered during construction, all earthmoving activity which would adversely impact such resources shall be halted or altered until Level (3) retains the service of a qualified archaeologist who will do the appropriate examination and analysis. The archaeologist will provide proposals for any procedures to mitigate the impact upon those resources encountered. Level (3)'s compliance with this mitigation measure shall be included in its quarterly report.

Additional Mitigation Measures as Identified in the Attached Initial Study

In addition to the foregoing, the following mitigation measures, as identified in the attached Initial Study, are recommended to reduce all potential impacts to a level of less-than-significant. These measures are listed below by resource/issue area. A listing of these measures by site is provided as Table 4-1 of the attached document. **A Mitigation Monitoring Plan for these measures is provided as Appendix B of the attached document.**

Air Quality:

Measure III-1: (All Sites).

In order to minimize the generation of ozone precursors during the most sensitive times of the day, testing of the emergency generators at the Terminal, D-Node, 3R and ILA sites will be scheduled to occur between 3:00 and 7:00 p.m.

Measure 14-III-1: (Santa Barbara ILA Site).

The following actions shall be taken prior to and during construction:

- Trucks transporting fill material to and from the site shall be tarped from the point of origin.
- The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust off site. Their duties shall include holiday and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the Air Pollution Control District prior to land use clearance for map recordation and land use clearance for finish grading for the structure.

Measure 14-III-2: (Santa Barbara ILA Site).

The following actions shall be taken prior to and during construction:

- Heavy-duty diesel-powered construction equipment manufactured after 1996 (with federally mandated "clean" diesel engines) should be utilized wherever feasible.
- The engine size of construction equipment shall be the minimum practical size.
- The number of construction equipment operating simultaneously shall be minimized through efficient management practices to ensure that the smallest practical number are operating at any one time.
- Construction equipment shall be maintained in tune per the manufacturer's specifications.
- Construction equipment operating on site shall be equipped with two to four degree engine timing retard or precombustion chamber engines.
- Catalytic converters shall be installed on gasoline-powered equipment, if feasible.
- Diesel catalytic converters shall be installed, if available.
- Diesel powered equipment should be replaced by electric equipment whenever feasible.
- Construction worker trips should be minimized by requiring carpooling and by providing for lunch on site.

Aesthetics:

Measure 1-I-1: (Tionesta 3R Site).

All project facilities including buildings, fencing, and signs, will be painted with neutral earth-tone colors that will blend with existing facilities and the background of existing vegetation. A specific painting plan will be submitted for CPUC approval prior to issuance of a construction notice to proceed

to ensure that the proposed colors do not unduly contrast with the surrounding landscape colors. All treatments will be in non-reflective colors. The painting plan will also be submitted sufficiently early to ensure that any precolored structures can have colors approved and included in bid specifications for buildings. Adherence to the approved painting plan will be determined by the CPUC construction monitor.

Measure 1-I-2: (Tionesta 3R Site).

Appropriate tree species will be planted along the north and west sides of the ILA site to soften the industrial appearance of the ILA facility and to more effectively blend the facility with the existing landscape as viewed from County Road 97. A specific landscaping plan will be prepared showing the location of proposed landscaping, the varieties and sizes of plants to be used, and the proposed time to maturity for each species. The landscaping plan will be submitted for CPUC approval prior to issuance of a construction notice to proceed. Adherence to the approved landscaping plan will be determined by the CPUC construction monitor.

Measure 1-I-3: (Tionesta 3R Site).

Except as required by security and worker safety requirements, night lighting will be hooded to direct illumination downward and inward toward the areas to be illuminated in order to minimize nighttime light and glare, backscatter to the nighttime sky, and visibility of lighting to motorists on County Road 97 and the nearby residence. A specific lighting plan consistent with operational and safety needs will be submitted to the CPUC for approval prior to issuance of a construction notice to proceed. The plan will include provisions for timed and/or motion detection-controlled switches. The lighting plan will also propose a procedure to resolve any lighting complaints. Adherence to the approved lighting plan will be determined by the CPUC construction monitor.

Measure 9-I-1: (San Ardo ILA Site).

All project facilities including buildings, fencing, and signs, will be painted with neutral earth-tone colors that will blend with the existing landscape. A specific painting plan will be submitted for CPUC approval prior to issuance of a construction notice to proceed to ensure that the proposed colors do not unduly contrast with the surrounding landscape colors. All treatments will be in non-reflective colors. The painting plan will also be submitted sufficiently early to ensure that any precolored structures can have colors approved and included in bid specifications for buildings. Adherence to the approved painting plan will be determined by the CPUC construction monitor.

Measure 9-I-2: (San Ardo ILA Site).

Appropriate tree and shrub species will be planted along the north, west, and south sides of the ILA site to soften the industrial appearance of the ILA facility and to more effectively blend the facility with the existing landscape as viewed from Cattlemen Road and Short Street. A specific landscaping plan will be prepared showing the location of proposed landscaping, the varieties and sizes of plants to be used, and the proposed time to maturity for each species. The landscaping plan will be submitted for CPUC approval prior to issuance of a construction notice to proceed. Adherence to the approved landscaping plan will be determined by the CPUC construction monitor.

Measure 9-I-3: (San Ardo ILA Site).

Except as required by security and worker safety requirements, night lighting will be hooded to direct illumination downward and inward toward the areas to be illuminated in order to minimize nighttime light and glare, backscatter to the nighttime sky, and visibility of lighting to residents and motorists on Cattlemen Road. A specific lighting plan consistent with operational and safety needs will be submitted to the CPUC for approval prior to issuance of a construction notice to proceed. The plan will include provisions for timed and/or motion detection-controlled switches. The lighting plan will also propose a procedure to resolve any lighting complaints. Adherence to the approved lighting plan will be determined by the CPUC construction monitor.

Measure 10-I-1: (Cuesta Grade Workaround).

A landscaping and erosion control plan will be prepared showing the location of proposed landscaping, the varieties and sizes of plants and/or seed mixes to be used, and the proposed time to maturity for each species. The landscaping plan will be developed and submitted for CPUC approval prior to issuance of a construction notice to proceed, and should be consistent with local agency guidelines. Adherence to the approved landscaping plan will be determined by the CPUC construction monitor.

Geology and Soils:

Measure VI-1: (All Sites).

Should construction-related activities encounter any recorded or unrecorded oil, gas or injection wells, Level (3) will ensure that construction activities are immediately stopped or re-directed until such time that Level (3) has contacted the appropriate District of the Division of Oil, Gas and Geothermal Resources. Level (3) will ensure that all District recommended remedial actions are completed and approved by the District prior to continued construction in the vicinity of the subject well.

Hazards and Hazardous Materials:

Measure 10-VII-1: (Cuesta Grade Workaround).

Level (3) shall prepare a fire prevention plan, to be approved by the appropriate local fire district, prior to construction commencing on the Workaround.

Land Use:

Measure 1-IX-1: (Tionesta 3R Site).

Prior to the start of any construction-related activity, Level (3) shall ensure that the County has adopted General Plan Land Use and Zoning designations for the subject property, and that the proposed 3R facility fully conforms with these designations. Documentation of compliance with this measure shall be submitted to the assigned project Environmental Monitor at least two business days prior to construction. (Measure 1-IX-1).

Noise:

Measure 2-XI-1: (Palo Cedro ILA Site).

Level (3) will restrict generator testing to the hours between 7:00 a.m. and 10:00 p.m., except as prescribed by Measure III-1.

Measure 2-XI-2: (Palo Cedro ILA Site).

Level (3) shall take immediate corrective actions to minimize the noise level below the County's threshold, if use of the emergency generator is necessary between the hours of 10:00 p.m. and 7:00 a.m.

Measure 9-XI-1: (San Ardo ILA Site).

To minimize noise-related impacts associated with testing of the emergency generator, the generator shall be set back a minimum of 200 to 250 feet from the closest receptor.

Measure 19-XI-1: (Hanford ILA Site).

Level (3) shall comply with the City of Hanford General Plan by restricting construction and routine operation activities to between the hours of 7:00 a.m. and 10:00 p.m., except as prescribed by Measure III-1.

Transportation/Traffic:

Measure 10-XV-1: (Cuesta Grade Workaround); Measure 15-XV-1: (Ventura ILA Site); Measure 16-XV-1: (Moorpark ILA Site); Measure 19-XV-1: (Hanford ILA Site); Measure 20-XV-1: (Bakersfield ILA Site); and, Measure 24-XV-1: (El Centro ILA Site).

At locations where access to nearby property is blocked, provision shall be ready at all times to accommodate emergency vehicles, such as plating over excavations, short detours, and alternate routes.

ENVIRONMENTAL DETERMINATION

The CPUC's Initial Study for the 21 proposed off-ROW elements that are the subject of this review was prepared to identify potential effects on the environment due to construction and operation, as well as to evaluate the significance of these effects. The Initial Study was based upon information presented in the Final PEA, as well as independent research and evaluation, as described in Section 4 of the attached Initial Study.

Based upon the conclusions of its Initial Study, the CPUC finds that the proposed off-ROW elements of the project will not have a significant effect on the environment with appropriate incorporation of: (1) the existing mitigation measures of Negative Declaration IX; (2) the environmental commitments that Level (3) has incorporated into the project by design; and, (3) the additional mitigation measures presented above.

Signature

Date: