

## DOCKETED

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September 6, 2016

Mr. Joseph Street  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Re: Puente Power Project – Response to Recommended Specific Provisions in August 26, 2016 Proposed Report

Dear Mr. Street:

On behalf of NRG Energy Center Oxnard LLC (“NRG” or “Applicant”), owner and developer of the Puente Power Project (“Project” or “P3”) currently under review by the California Energy Commission (“CEC”) (Docket No. 15-AFC-01), we hereby respond to the recommended specific provisions (“Recommendations”) contained in the proposed “California Coastal Commission Report to California Energy Commission on Application for Certification 15-AFC-01 – NRG Puente Power Project” prepared by California Coastal Commission (“Coastal Commission”) staff and released on August 26, 2016 (“Proposed Report”).<sup>1</sup>

This letter supplements our earlier correspondence dated September 2, 2016, in which we provided additional information related to the staff’s initial determination that a portion of the Project site constitutes a “wetland,” and staff’s assessment of risk related to flood, sea level rise and tsunami hazards. Based on that additional information, we requested that Coastal Commission staff: i) reverse its initial determination that a portion of the Project site constitutes a wetland; ii) reassess the level of risk to the Project from flooding, sea level rise and tsunami hazards; and iii) delete from the Proposed Report any Recommendations that the Project be relocated to an alternative site. This letter responds to the remainder of the Recommendations. The attached table identifies each of the Recommendations and indicates whether NRG accepts

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<sup>1</sup> The Proposed Report indicates that the Coastal Commission is reviewing the Project pursuant to Public Resources Code section 30413(d). We note that the Section 30413(d) process applies only to notice of intention (“NOI”) proceedings, and that thermal natural gas-fired power plant facilities such as the Project are statutorily exempt from the NOI process. (Pub. Resources Code, § 25540.6(a)(1).) NRG’s commitment to implement the Recommendations as set forth in this letter does not constitute concurrence that Section 30413(d) applies to the Coastal Commission’s review of the Project or the Recommendations provided by the Coastal Commission to the CEC.

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the Recommendation as proposed, accepts the Recommendation with proposed revisions, or rejects the Recommendation.

In the event the Project is approved by the CEC as proposed, NRG is prepared to make significant commitments to implement the Recommendations, some of which will require substantial changes to the Project, including removal of the existing shoreline discharge outfall. NRG's commitment to implement the Recommendations as set forth in the attached table, taken together with the additional information contained in our earlier correspondence to you, further supports a finding that the Project as proposed will conform to the extent feasible with relevant policies of the California Coastal Act and the City of Oxnard's Local Coastal Program, and reinforces that any Recommendation to relocate the Project is unfounded and unnecessary.

NRG urges the Coastal Commission staff to supplement the Proposed Report to reflect the additional information provided in our September 2, 2016 letter, acknowledge NRG's commitment to implement the Recommendations as set forth herein, and eliminate any Recommendation that the Project be relocated. Thank you for your consideration of our input on the Proposed Report. We look forward to continuing discussions with you as this matter proceeds.

Best regards,

  
Michael J. Carroll *MC*  
Of LATHAM & WATKINS LLP

Attachment

cc: Mark Delaplaine

**Puente Power Project (15-AFC-01)**

**Response to Recommended Specific Provisions in California Coastal Commission Staff's Proposed Report**

<b>Topic Area</b>	<b>CCC Staff's Recommended Specific Provision</b>	<b>Applicant's Response Accept/Accept with Revisions/Reject</b>
<b>Wetlands and ESHA</b>		
Direct Wetland Impacts - Alternatives	To ensure that the P3 conforms to the policies of Coastal Act Sections 30231 and 30233(a) and LCP Policy 52, we recommend the Energy Commission require that the proposed project be relocated to an alternative site that would not result in direct impacts to or fill of coastal wetlands. Alternative sites could include, but are not limited to, the Ormond Beach Area or on-site reconfiguration alternatives identified in the PSA. (Proposed Report, p. 13)	<b>Reject</b> As set forth in NRG's September 2, 2016 comments, no portion of the proposed Project site meets the definition of a "wetland." Further, no alternative offsite or onsite reconfigurations are feasible or environmentally superior to the proposed site.
Direct Wetland Impacts - Mitigation	If the CEC determines that relocating the P3 to an alternative site that avoids fill of coastal wetlands is infeasible, consistency with Coastal Act Section 30233(a) would still require that the adverse impacts of wetland fill be minimized by the provision of feasible mitigation measures. In order to ensure that the proposed mitigation fully compensates for temporal losses of wetland habitat and accounts for significant uncertainties in the success of any wetland restoration project, and thus minimizes the adverse effects of the project, the Commission recommends that the CEC modify Condition BIO-9 to require compensatory mitigation for direct impacts to wetlands in the form of wetland restoration at a 4:1 ratio at a nearby location. (Proposed Report, p. 14)	<b>Accept with Revisions</b> As set forth in NRG's September 2, 2016 comments, no portion of the proposed Project site meets the definition of a "wetland," and therefore compensatory mitigation is not required. Nevertheless, Applicant is prepared to accept Condition of Certification BIO-9 as proposed in the PSA at a ratio of 2:1 as a means of mitigating for the loss of hydrophytic plants currently present on the proposed Project site.
Indirect Impacts to Wetlands and ESHA – Required Buffer	To ensure the project conforms to the extent feasible with LCP Policy 6, we recommend the Energy Commission modify Condition BIO-7 to require that NRG design the P3 such that all project-related development is at least 100 feet, and further, if feasible, from nearby areas that meet the Coastal Commission and LCP definitions of wetlands or ESHA. We also recommend that submittal of revised project plans be required to reflect these changes in the project layout.	<b>Accept</b> As currently proposed, all Project-related development, including the construction laydown and parking areas, are at least 100 feet from currently identified off-site wetlands and ESHA north of the MGS property. Applicant therefore accepts this recommendation with respect to such wetlands and ESHA, and will implement best management practices (BMPs) to minimize potential impacts to those resources. CEC staff has proposed Condition of Certification

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	<p>This recommended modification would also require NRG to submit a revised project plan showing that all project-related development is at least 100 feet from wetlands and ESHA. This requirement could be met through the selection of an off-site alternative location (such as the Ormond Beach Area site), relocating the project to one of the two on-site alternative locations identified in the Alternatives section (PSA pages 211-324), or by moving the proposed project footprint (specifically, the construction and laydown area) a few dozen feet away from the northern boundary of the site, which abuts the wetland/ESHA restoration area. Such an adjustment would appear to be feasible based on the amount of space available within the project site. (Proposed Report, p. 16)</p>	<p>BIO-6, which requires a Biological Resources Implementation and Monitoring Plan (BRIMP) to implement BMPs, monitoring and contingency measures. The BRIMP, together with the other proposed Conditions of Certification, will ensure that Project-related activities will not result in significant adverse effects on ESHA. It should be noted that the existing flood protection berm along the northern MGS property line separates the Project site from the identified off-site wetlands and ESHA areas.</p>
<p>Indirect Impacts to Wetlands and ESHA – Avoiding Effects of Construction Dewatering on Adjacent ESHA/Wetland Areas</p>	<p>To ensure project dewatering is done in a manner consistent with applicable Coastal Act and LCP policies, the Commission recommends that the CEC modify <b>Condition SOIL&amp;WATER-3</b> to require that groundwater level monitoring measures be included in the required dewatering plan. Specifically, we recommend that the required monitoring include monitoring of groundwater levels at a minimum of two locations along the northern edge of the MGS parcel (between the P3 site and adjacent habitat areas). Additionally, we recommend that <b>Condition SOIL&amp;WATER-3</b> be modified to require that NRG immediately cease dewatering activities if groundwater monitoring demonstrates a decrease in groundwater levels outside of the previously- projected radius of influence, until such time as NRG has revised the dewatering and/or foundation installation plan to reduce the area of groundwater drawdown such that reduced groundwater levels do not extend beyond the monitoring wells and parcel boundary. (Proposed Report, p. 17)</p>	<p><b>Accept</b></p> <p>Applicant accepts this recommendation with the following clarifications:</p> <ul style="list-style-type: none"> <li>• Applicant agrees to develop a Construction Dewatering Plan and submit to the CEC CPM for review and approval. This plan will be developed during detailed design and will provide details of the dewatering methods, areas to be dewatered, monitoring requirements and criteria for modifying the plan as needed.</li> <li>• Although PSA SOIL&amp;WATER-3 is titled Construction Dewatering Plan, the text is incorrect. It does not describe dewatering, but instead incorrectly addresses wastewater discharges during operations, i.e., it is a duplicate to SOIL &amp; WATER-4. It is expected that CEC staff will correct and modify SOIL&amp;WATER-3 as appropriate.</li> <li>• Applicant agrees to perform groundwater elevation monitoring during dewatering activities that could affect wetlands and ESHA north of the site. There is one existing monitoring well (MW-2) between the P3 site and the northern boundary that could be used to avoid potential impacts associated with installing additional wells and/or piezometers. The location and</li> </ul>

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		need for an additional monitoring well would be evaluated in the proposed Construction Dewatering Plan submitted to the CEC CPM.
Indirect Impacts to Wetlands and ESHA – Reducing Effects of Project Noise and Vibration on Adjacent ESHA/Wetland Areas	The Commission generally concurs with the PSA's recommended approach to avoiding and reducing noise-related effects in the nearby ESHA and wetland areas. However, the Commission recommends two modifications to <b>Condition BIO-8</b> to ensure consistency with Coastal Act and LCP provisions requiring protection of these habitat areas:	
	<ul style="list-style-type: none"> <li>• <b>Inclusion of noise monitoring and noise thresholds:</b> The sensitive-species monitoring provisions of <b>Condition BIO-8</b> should be modified to include both monitoring of noise levels and an allowable noise threshold in adjacent sensitive habitat, in order to prevent disturbance of nesting birds during construction and demolition activities. Specifically, <b>Condition BIO-8</b> should be modified to require that NRG prepare and implement a Noise Monitoring Plan throughout construction and demolition activities taking place during the bird breeding season (February 1 to August 31). The Plan should require continuous noise monitoring at several locations near known or suitable nesting habitat adjacent to the project site, and should require that noise levels at these monitoring locations not exceed 8 dBA above ambient levels or 60 dBA (hourly average Leq), whichever is greater. In addition, sound levels within 100 feet of active nests (as identified during the nesting surveys required pursuant to Condition BIO-8) should not exceed 65 dBA. The Plan should also require that monitoring devices be reviewed daily during any construction occurring within 400 feet of the project's boundary with adjacent wetland, mulefat scrub or dune areas, and during any pile-driving activities. If construction noise exceeds these levels, NRG should be required to implement noise-reduction measures, which may include installing</li> </ul>	<p><b>Accept with Revisions</b></p> <p>Applicant agrees to prepare a Noise Monitoring Plan for construction and demolition. Applicant proposes the following revisions to the recommendation:</p> <ul style="list-style-type: none"> <li>• Applicant accepts a 65 dBA hourly Leq construction/demolition noise limit monitored as part of Condition of Certification BIO-8 activities at a distance of 100 feet from an active nest during the breeding/nesting season, based on the understanding that the limit applies to construction/demolition noise from the P3 and MGS site only.</li> <li>• With ambient noise level measurements (to assess noise above ambient that would be attributed to construction/demolition noise for P3 and demolition of MGS Units 1 &amp; 2) adopted as part of BIO-8 activities near active nests, Applicant does not agree that continuous monitoring at several additional and as-yet unidentified habitat locations needs to be implemented. Applicant also does not agree with the suggested noise limits of 60dBA and increase of 8 dBA for these unidentified locations, on the basis that page 4.2-28 of the PSA notes "the Energy Commission declined 60 decibels as too low a disturbance threshold to use for avian species (CEC 2014)." Therefore,</li> </ul>

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	<p>temporary sound barriers, or, as feasible, moving noise-generating activities further from the ESHA/wetland areas, and avoiding pile driving or confining pile driving to project areas furthest from the sensitive habitats.</p> <p>These recommendations are complementary to and more protective of sensitive wildlife than the current requirements of <b>Condition BIO-8</b>, which would rely on relatively infrequent monitoring of known nests and would not require impact avoidance measures to be enacted until the disturbance or "take" of nesting birds had already occurred. (Proposed Report, pp. 19-20)</p>	<p>Applicant recommends that the following sentence be removed from the provision as shown in strikeout below:</p> <p><del>The Plan should require continuous noise monitoring at several locations near known or suitable nesting habitat adjacent to the project site, and should require that noise levels at these monitoring locations not exceed 8 dBA above ambient levels or 60 dBA (hourly average Leq), whichever is greater.</del></p>
	<ul style="list-style-type: none"> <li>• <b>Prohibition on pile driving during nesting season:</b> Second, Condition BIO-8 should be modified to require that NRG schedule and conduct all pile driving activities outside the February 1 through August 31 breeding and nesting season. Condition BIO-8 currently leaves open the possibility that pile driving could occur in close proximity to active nesting areas. As noted above, the PSA already anticipates that noise levels during pile driving would exceed the 60 – 65 dBA threshold deemed by the CDFW and USFWS to be protective of nesting birds at distances of 2,600 to 4,100 feet, which would encompass large areas of known and suitable nesting habitat in the wetlands and dunes surrounding the MGS site. Additionally, pile driving has the potential to cause substantial vibration levels (VdB), in nearby wetlands and ESHA, although the PSA does not identify those expected levels. Given the expected threshold exceedance and the additional unquantified but likely significant vibration-related effects, this modification would further reduce project-related adverse effects on nearby ESHA and wetland areas. (Proposed Report, p. 20)</li> </ul>	<p><b>Accept with Revisions</b></p> <p>Applicant's current plan is to avoid pile driving altogether and use alternative methods for construction of P3, such as auger cast, hydraulic or drilled piles, which minimize noise and vibration. In the event that during detailed design or during construction, pile driving becomes necessary, and it is not feasible to schedule and conduct the pile driving outside the February 1 through August 31 breeding and nesting season, Applicant will work with the biologist and CEC's CPM to develop an appropriate plan to reduce project-related adverse effects on nearby ESHA and wetland areas.</p>
Wastewater Discharge & Impacts of Outfall Structure	To ensure consistency with Coastal Act and LCP Policies requiring the maintenance and protection of marine resources and sensitive species and habitats and the minimization of adverse impact from adjacent development, and LCP Policy 64, requiring the reuse of	<p><b>Accept</b></p> <p>Subject to CEC approval of an alternative means of handling process wastewater and stormwater from P3, Applicant will discontinue use of the existing MGS outfall and will include removal of the outfall as</p>

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Maintenance	wastewater from energy-related facilities, the Commission recommends that the CEC require NRG to develop a Wastewater Reuse and Recycling Plan, including any necessary water treatment, that would maximize reuse of the process wastewater and storm water generated and collected at the MGS following the construction of the P3 and decommissioning of Units 1 and 2 and eliminate the discharge of wastewater to the beach. The Plan could include the possible reclamation, storage and reuse of storm water as described above, the treatment and reinjection of wastewater for purposes of groundwater recharge (to replace infiltration lost as a result of impervious surfaces on the MGS site), treatment and discharge to the Edison Canal (if such use would promote water circulation necessary to prevent stagnation), treatment and recycling for off-site industrial, agricultural or urban use, or other beneficial uses. In the event that full wastewater reuse and recycling is determined to be infeasible, we recommend that the CEC require the Wastewater Plan to include measures that would prevent the recurrence of back-beach ponding, avoid impacts to avian nesting areas, and eliminate the need for repeated excavation of a discharge channel on the beach. (Proposed Report, p. 22)	part of the demolition of MGS Units 1 and 2. P3 will reuse process wastewater and stormwater to the maximum extent feasible.
<b>Flood, Sea Level Rise, and Tsunami Hazards</b>		
Flood, Sea Level Rise, and Tsunami Hazards	To address hazards presented by flooding, sea level rise and tsunamis, and their associated risks to the proposed facility, and to allow consistency with relevant provisions of the Coastal Act and LCP, the Commission recommends the CEC develop a new condition of certification achieving the following:  <b>Relocation of Project to Minimize Risk of Flooding:</b> In order to ensure that the proposed project minimizes risks to life and property, assures stability and structural integrity, and remains inland of the 100-year flood zone over the full life of the project, as required by Coastal Act Section 30253 and LCP Policies 40 and 56, the Commission recommends that the CEC require NRG to relocate the proposed project to an alternative site that is (a) outside the current 100-year and 500-year flood zones, and (b) would not be at risk of flooding related to high water levels, storm waves or coastal erosion,	<b>Reject</b> As set forth in NRG's September 2, 2016 comments, the level of risk associated with exposure to flood, sea level rise and tsunami hazards does not warrant relocation of the Project. Further, no alternative offsite or onsite reconfigurations are feasible or environmentally superior to the proposed site.



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	including the effects of sea level rise, over the full 30-year project term. (Proposed Report, p. 35)	
Flood, Sea Level Rise, and Tsunami Hazards	If the CEC determines that there is no feasible site meeting these criteria to which the project could be relocated, the Commission recommends the following new and modified conditions are necessary allow consistency, to the extent feasible, with relevant Coastal Act and LCP policies:	
	<ul style="list-style-type: none"> <li> <b>Flood Damage Prevention:</b> In order to minimize risks to life and property from flooding within the confines of the MGS site, the Commission recommends the CEC include the following new condition of approval:  <u>Prior to the start of construction, NRG shall submit for CPM review and approval, certification from a licensed engineer that the proposed facility is elevated above, or protected from, a 500-year flood event at the project site that includes an additional 24 inches of sea level rise. The engineer's determination shall describe the methods and include the calculations used to determine the elevation of the current 500-year flood event at the site and those used to determine the elevation of a future 500-year flood event with the additional 24 inches of sea level rise expected during the facility's thirty year operating life.</u>  <u>The elevations and proposed changes to the facility design shall be incorporated into the final project design submitted to the CPM.</u> (Proposed Report, pp. 35-36) </li> </ul>	<p><b>Accept</b> Applicant accepts this recommendation.</p>
	<ul style="list-style-type: none"> <li> <b>No Shoreline Protective Device:</b> Coastal Act Section 30253(b) requires that new development "neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices ..." To ensure consistency with this policy, the Commission recommends that the CEC include the following new condition of approval:  <u>In the event that the approved development, including any future improvements, is threatened with damage or destruction from coastal hazards, or is damaged or destroyed by coastal hazards,</u> </li> </ul>	<p><b>Accept</b> Applicant accepts this recommendation.</p>

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	<p><u>protective structures (including but not limited to seawalls, revetments, groins, deep piers/caissons, etc.) shall be prohibited. By acceptance of the CEC approval, the project owner waives any right to construct such protective structures, including any that may exist under Public Resources Code Section 30235.</u> (Proposed Report, p. 36)</p>	
	<ul style="list-style-type: none"> <li>• <b>Beach and Dune Monitoring:</b> Due to the importance of a wide beach and intact dunes for reducing flood hazards at the project site, the Commission recommends that the CEC require NRG to implement a Beach and Dune Monitoring Program to be carried out over the life of the project. The purpose of this monitoring would be to determine if, and at what rate, the beach and/or dunes are eroding. The Program should include triggers for further action based on the degree of beach narrowing and/or dune loss, and measures should be identified that could halt or slow the observed erosion without construction of shoreline protective devices. One such measure could include financial support for dredging and sand bypassing at Ventura Harbor, particularly if a hiatus in sand bypassing is shown to be contributing to erosion at the project site. (Proposed Report, p. 36)</li> </ul>	<p><b>Accept</b> Applicant accepts this recommendation.</p>
	<ul style="list-style-type: none"> <li>• <b>Facility Removal.</b> As discussed above, in the second half of the century the MGS is likely to be subject to hazards, including increasingly frequent and severe flooding and shoreline erosion, which will render the facility, including the P3, inoperable. In order to minimize this risk to life and property, and assure that the proposed development does not contribute to the destruction of the site or surrounding area, as required by Coastal Act Section 30253, the Commission recommends that the CEC require NRG to submit a plan, prior to the end of the proposed 30-year life of the P3, for the decommissioning and full removal of the facility. (Proposed Report, p. 36)</li> </ul>	<p><b>Accept</b> Applicant accepts the CEC's standard Condition of Certification regarding facility closure and removal (proposed Condition of Certification COM-15, PSA, p. 6-19).</p>
<b>Public Access and Recreation</b>		

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Public Access and Recreation - Wastewater Discharge and Reuse of Outfall Structures	To ensure consistency with Coastal Act Sections 30210 and 30211, and LCP Policies 52 and 54, the Commission recommends that the CEC require NRG to develop a Wastewater Reuse and Recycling Plan, including any necessary water treatment, that would maximize reuse of the process wastewater and storm water generated and collected at the MGS following the construction of the P3, and eliminate the discharge of wastewater to the beach. In the event that full wastewater reuse and recycling is determined to be infeasible, the Commission recommends that the CEC require that the Wastewater Plan include measures that would prevent the recurrence of back-beach ponding, avoid the creation of public hazards and other impacts to public access and recreation, and eliminate the need for repeated excavation of a discharge channel on the beach. (Proposed Report, p. 40)	<b>Accept</b> To address this recommendation, and satisfy the requirements of Public Resources Code section 25529 related to establishment of an area for public use, subject to CEC approval of an alternative means of handling process wastewater and stormwater from P3, Applicant will discontinue use of the existing MGS outfall and will include removal of the outfall as part of the demolition of MGS Units 1 and 2. P3 will reuse process wastewater and stormwater to the maximum extent feasible.
Public Access and Recreation – Public Access Improvements	To address the public access requirements of Section 25529 of the Warren-Alquist Act as well as the relevant provisions of the Coastal Act and LCP, the Commission recommends that <b>Condition LAND-1</b> be modified to require the full removal, partial removal, or down-sizing of the existing outfall structures (including riprap and fence), to eliminate or minimize impacts to public access. (Proposed Report, pp. 41-42)	<b>Accept</b> Subject to CEC approval of an alternative means of handling process wastewater and stormwater from P3, Applicant will discontinue use of the existing MGS outfall and will include removal of the outfall as part of the demolition of MGS Units 1 and 2. P3 will reuse process wastewater and stormwater to the maximum extent feasible.
Public Access and Recreation – Facility Abandonment	In order to avoid foreseeable public access impacts from any future abandonment-in-place of the MGS and/or P3, and to allow consistency with Coastal Act and LCP policies requiring maximum public access and requiring that energy-related development be designed to minimize adverse effects on public access, the Commission recommends that the CEC include a new condition of approval requiring that NRG develop decommissioning plans which include the removal of all MGS and P3 structures and facilities, including below-grade components, at the end of the operating lives of the respective facilities. (Proposed Report, p. 42)	<b>Accept with Revisions</b> Applicant's commitment regarding demolition of MGS Units 1 and 2 is set forth in its "Project Enhancement and Refinement – Demolition of Mandalay Generating Station Units 1 and 2" docketed with the CEC on November 19, 2015 (TN # 206698). With respect to P3, Applicant accepts the CEC's standard Condition of Certification regarding facility closure and removal (proposed Condition of Certification COM-15, PSA, p. 6-19), which requires development and CEC approval of a Final Closure Plan to "ensure that a facility's eventual permanent closure and long-term maintenance do not pose a threat to public health and safety and/or to environmental quality."

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Public Access and Recreation – Project-Related Traffic	To ensure consistency with Coastal Act and LCP policies protecting public access to the coast, the Commission recommends that Condition TRANS-3 be modified to require NRG to include in its Traffic Control Plan any measures necessary to minimize construction traffic on weekends and holidays, and to avoid delays and degraded LOS during these key recreational periods. (Proposed Report, p. 43)	<p><b>Accept</b> Applicant accepts this recommendation.</p> <p>Please note that proposed Condition of Certification TRANS-2, as opposed to TRANS-3, addresses the Traffic Control Plan.</p>