

**STAFF REPORT
C51**

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12/03/18
PRC 8204.1
L. Pino

AMENDMENT OF LEASE

LESSEE:

AT&T Corporation

AREA, LAND TYPE, AND LOCATION:

3.5 acres, more or less, of sovereign land in the Pacific Ocean, offshore of Montaña de Oro State Beach in San Luis Obispo County.

AUTHORIZED USE:

Continued use and maintenance of one fiber-optic cable.

LEASE TERM:

15 years, beginning July 1, 2010.

CONSIDERATION:

\$115,042 per year, subject to modification by Lessor as specified in Lease Paragraph 2(b) of Section 4 – General Provisions.

PROPOSED AMENDMENT:

Amend the lease to:

Delete Paragraph 11, of Lease Section 2, Special Provisions, in its entirety and replace with the following:

In the absence of a qualifying event that would trigger a cable burial inspection survey as described herein, on or before the lease anniversary date in 2020 and 2024, the Lessee shall submit a written statement to the Lessor's Executive Officer and to the California Coastal Commission (CCC) confirming that no qualifying event has occurred since the prior burial inspection survey and that no other conditions or changes have occurred that would be expected to affect the burial status of the segments of the cable that were documented as buried in the post-lay survey and subsequent burial inspection surveys.

A "qualifying event" that will trigger a burial inspection survey for the purposes of this lease is defined as: an incident or activity (such as a gear

STAFF REPORT NO. **C51** (CONT'D)

snag), the circumstances of which indicate the likelihood that the previously buried cable has become unburied; or an act of God, such as a severe earthquake in the vicinity of the cables that could cause deformation of the sea floor or underwater landslides; or any other significant event that could cause excessive ocean floor scouring. Lessee shall notify Lessor in writing within 10 days of the reporting or other identification of a qualifying event. This notification shall describe the location and nature of the qualifying event and the proposed survey, including survey location and timing. Following approval of the proposed survey, Lessee shall commence a burial inspection survey at the soonest available opportunity, subject to vessel availability, weather conditions, and related operational conditions affecting the survey.

The burial inspection survey shall be conducted with an ROV equipped with video capable of producing still images and by a third party agreed to by the permitting agencies on portions of the cable potentially affected by the qualifying event. The survey, along with a narrative report describing the results, including the location(s) of any segments of unburied cable and the depth of burial for the remaining cable segments surveyed, shall be submitted to the Lessor and the CCC within 30 days of survey completion. Within 30 days of the submission of the survey report, the cable owner must submit a plan for review and approval by Lessor's staff for reburying any segments that may have become unburied. Such plan shall include a proposed schedule for completion of the necessary work, including gear retrieval if such action is feasible and safe.

All other terms and conditions of the lease shall remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 20003.

Public Trust and State's Best Interests Analysis:

The Commission has granted several right-of-way leases for fiber-optic cables buried in the bed of the Pacific Ocean. These cables are segments of the global communications network. The current lease area is occupied by an existing buried fiber-optic cable extending into the Pacific Ocean, identified as the southern portion of Segment 9 of the Japan-U.S. Fiber-Optic Cable Network. The portion of Segment 9 that is subject to this Lease extends approximately 23,800 feet along the ocean floor. While the use of sovereign land for the placement of a fiber-optic cable does not

STAFF REPORT NO. **C51** (CONT'D)

promote waterborne recreation, navigation, fishing, or commerce, it also does not substantially interfere with Public Trust, uses, needs, or values at this location, at this time.

These leases require periodic cable burial inspection surveys to address concerns that commercial fishing gear might snag cables if they become exposed. In 2003 and 2005, AT&T conducted cable burial surveys which indicated the cable burial status had not appreciably changed since installation in 2001. The survey reports showed no evidence of cable interaction with fishing gear or with marine mammals. The Commission has gradually extended the inspection intervals as surveys have shown no appreciable change in cable burial status and no snags have been reported.

On June 27, 2000, the Commission authorized a 10-year lease to AT&T Corporation for construction of the fiber-optic cable that is the subject of this lease (PRC No. 8204.1), along with five steel conduits and installation of another fiber-optic cable (PRC No. 8203.1) ([Item C16, June 27, 2000](#)). On October 30, 2007, the Commission authorized an amendment of this lease and other similar leases with AT&T (PRC Nos. 8154.1, 8203.1, 8278.1, 8143.1, and 8144.1) to extend the interval between periodic cable burial inspections from 18 to 24 months to 5 years, effective October 30, 2007 ([Item C39, October 30, 2007](#)).

On October 29, 2010, the Commission approved the renewal of Lease No. PRC 8204.1, for an additional 15-year period, beginning July 1, 2010, and ending June 30, 2025 ([Item C51, October 29, 2010](#)). AT&T is now applying for an amendment of the Lease to change the cable burial survey schedule provision from the current 5-year interval, to only upon a qualifying event.

The last burial inspection for Segment 9 was completed in September 2015. The survey indicates that the cable has not moved in an appreciable manner between the 2010 and 2015 surveys. Therefore, AT&T has requested that the cable-burial survey requirement of their current lease be changed. The lease requires burial surveys in November 2020 and November 2024. Under the proposed amendment, a survey would be required only upon a qualifying event, such as a snag or earthquake. If no qualifying event has occurred since the last burial survey, then the proposed amendment requires the Lessee to submit a written statement to the Commission's Executive Officer and to the CCC to that effect. Additionally, as a matter of consistency for its other fiber-optic cable leases, AT&T has also applied to amend its other leases, PRC No. 8144.1

STAFF REPORT NO. **C51** (CONT'D)

(for Segment 5 of the Asia America Gateway Fiber-Optic Cable System) and PRC No. 8203.1 (for Segments 8 and 9 of the Japan-U.S. Fiber-Optic Cable Network in Northern California), to reflect the same language.

The initial inspection interval requirement was the result of the relatively unknown impact that subsurface fiber-optic cables in the ocean would have on trawler fishing and other commercial fishing operations in the area. The primary concern was that fishing gear or anchors would snag on the cables disrupting vessel navigation and commercial fishing operations. Consequently, an 18- to 24-month burial inspection requirement was included as part of the lease authorized in 2000. Since the cable's installation, there have been no known interactions between the buried cable and commercial fishing activities or vessel anchors in the area.

The Central California Joint/Cable Fisheries Liaison Committee's (CCJFC) fishing party members, key stakeholders who operate in the nearby Morro Bay and Port San Luis areas, and who supported the current inspection intervals, have also expressed support for the new proposed cable burial verification survey interval.

Under the proposed amendment, AT&T would be required to inspect the portion of the conduit or cable affected by a qualifying event. Within 10 days of the reporting or other identification of a qualifying event AT&T must submit to staff written notice of the location and nature of the qualifying event and the proposed survey, including survey location and timing, for review and approval. If warranted, staff may direct AT&T to conduct a complete survey of the entire length.

The improvements have existed for many years at this location and do not significantly alter the land. The lease amendment does not alienate the State's fee simple interest, or permanently impair public rights. The lease requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved. AT&T will continue to provide adequate bond or security deposit, insure the lease premises, and indemnify the State for any liability incurred as a result of the lessee's activities thereon.

Climate Change:

The lease area consists of sovereign land located in the Pacific Ocean, offshore of San Luis Obispo County. Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect open coastal areas in California. By 2030, the region could see up to 1 foot of sea-level rise (from year 2000 levels), 2

STAFF REPORT NO. **C51** (CONT'D)

feet by 2050, and possibly over 5 feet by 2100 (National Research Council 2012). Rising sea levels can lead to increased flooding and larger tidal events and can affect erosion and sedimentation rates.

The Japan-U.S. fiber-optic cable was installed by horizontal directional drilling below the beach and surf zone and currently lies buried beneath the sea floor of the Pacific Ocean. Because the cable is buried below the seafloor, it should not be vulnerable to climate change impacts if properly maintained. Conformance with lease provisions for periodic surveys, inspections, and maintenance of the cables as needed or required by law should avoid or minimize future climate change-related impacts.

Conclusion:

For all the reasons above, staff believes the issuance of the lease amendment will not substantially impair the public rights to navigation, fishing, and commerce; or substantially interfere with the Public Trust needs and values at this location, at this time, or for the foreseeable term of the lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. The proposed lease amendment to modify the routine burial verification provision is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease amendment will not substantially impair the public rights to navigation, fishing, and commerce; or substantially

STAFF REPORT NO. **C51** (CONT'D)

interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 8204.1, a 15-year, General Lease – Right-of-Way Use, to change the cable burial inspection survey interval as described in the Amendment, effective December 3, 2018; all other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

LAND DESCRIPTION

A ten foot (3.048 meter) wide strip of submerged lands in the bed of the Pacific Ocean lying between the Ordinary High Water Mark and the State of California Offshore Boundary west of San Luis Obispo County, State of California, the centerline of said strip being more particularly described as follows:

BEGINNING at a point located in Section 23, Township 30 South, Range 10 East, Mount Diablo Base Meridian having a Latitude $35^{\circ} 17' 57.06124''$ North and a Longitude $120^{\circ} 52' 33.41413''$ West, said point being an NGS bronze triangulation disk set in the top of a 4" iron pipe designated "ZARD"; thence North $40^{\circ} 42' 30.7''$ West, 1072.845 meters to a point in submerged lands referred to as the POINT OF BEGINNING on the westerly boundary of SLC PRC # 8142 having a Latitude $35^{\circ} 18' 23.9280''$ North and a Longitude $120^{\circ} 53' 00.4140''$ West; thence North $36^{\circ} 44' 25.0''$ West 845.617 meters; thence North $41^{\circ} 45' 40.4''$ West 55.967 meters; thence North $37^{\circ} 17' 48.9''$ West 102.959 meters; thence North $01^{\circ} 13' 12.5''$ West 177.154 meters; thence North $01^{\circ} 13' 12.9''$ West 63.243 meters; thence North $21^{\circ} 03' 51.4''$ East 103.920 meters; thence North $30^{\circ} 06' 48.8''$ East 606.198 meters; thence North $16^{\circ} 29' 44.6''$ East 114.537 meters; thence North $00^{\circ} 16' 34.8''$ West 458.667 meters; thence North $44^{\circ} 43' 51.6''$ West 35.440 meters; thence North $45^{\circ} 06' 53.9''$ West 11.804 meters; thence North $44^{\circ} 38' 10.9''$ West 823.549 meters; thence North $44^{\circ} 48' 16.9''$ West 1184.604 meters; thence North $79^{\circ} 52' 33.0''$ West 389.432 meters; thence North $80^{\circ} 25' 04.3''$ West 1062.753 meters; thence North $80^{\circ} 00' 24.8''$ West 977.140 meters more or less to a point on the State of California Offshore Boundary said point being the POINT OF TERMINATION.

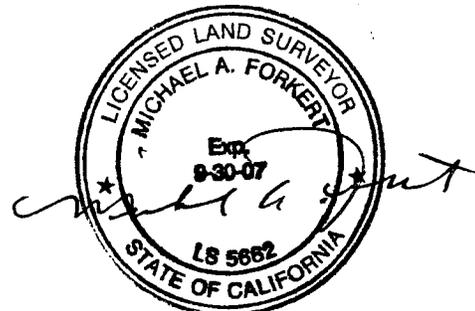
LENGTHENING OR SHORTENING the sidelines of said strip to meet at angle points and to terminate at said State of California Offshore Boundary.

EXCEPTING THEREFROM any portion of said strip lying seaward of said State of California Offshore Boundary and that portion thereof lying within Parcel A described in the SLC PRC # 8142 Land Description.

Geographic coordinate(s) are based on NAD 83. Bearings and distances are grid in meters, based on UTM, Zone 10N, NAD 83.

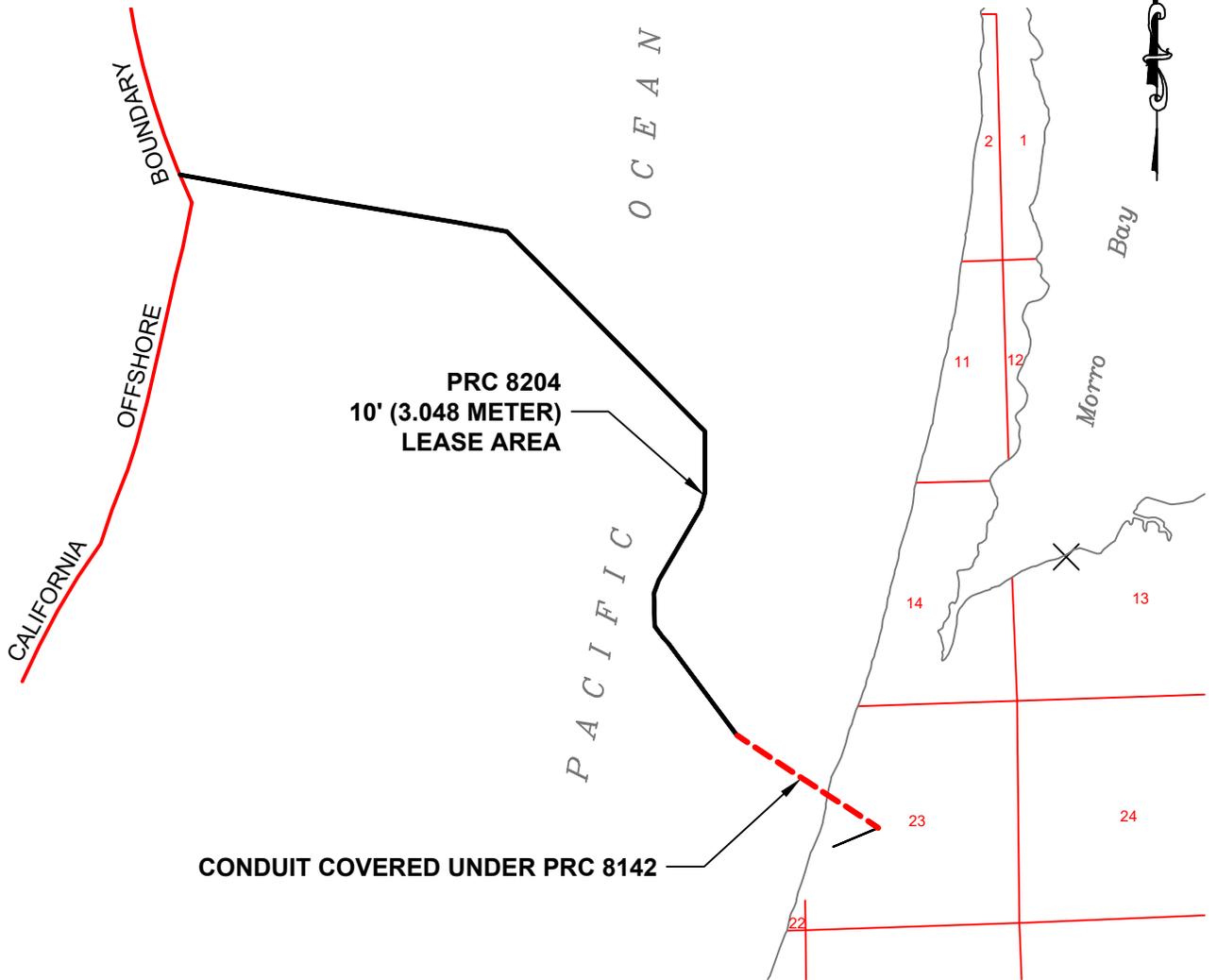
Positional information for Land Description is based on "Japan-US Segment 9, Morro Bay BMH to Point Arena BMH, Route Position List As-Laid 10, September 28, 2001" provided by Alcatel Submarine Networks.

END OF DESCRIPTION



NO SCALE

SITE



AT&T FIBER OPTIC CABLE AND CONDUIT

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 8204.1
AT&T CORP.
GENERAL LEASE
NON-EXCLUSIVE ROW
SAN LUIS OBISPO CO.

