

**CALENDAR ITEM
C82**

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12/02/13
PRC 8168.9
A. Franzoia

S 17, 19

GENERAL LEASE - RIGHT-OF-WAY USE

APPLICANT:

opticAccess, LLC

AREA, LAND TYPE, AND LOCATION:

135,000 linear feet, more or less, of sovereign land located in the Pacific Ocean, from Morro Bay in San Luis Obispo County, to Santa Barbara in Santa Barbara County.

AUTHORIZED USE:

Use and maintenance of an existing fiber optic cable and five steel conduits buried in the ocean floor.

LEASE TERM:

20 years, beginning December 2, 2013.

CONSIDERATION:

Public benefit derived from Applicant's acceptance of franchise obligations pursuant to California Public Utilities Code Section 7901.

SPECIFIC LEASE PROVISIONS:

Insurance: Liability insurance in an amount no less than \$1,000,000 per occurrence.

Bond: \$1,375,000 for removal and restoration.

Lessee shall perform an initial cable burial verification survey within two (2) years of authorization of this lease and every five (5) years thereafter.

Lessee shall sign a Joinder Agreement with the Joint Cable/Fisheries Liaison Committee (JCFLC) within 90 days of authorization of this lease.

CALENDAR ITEM NO. **C82** (CONT'D)

OTHER PERTINENT INFORMATION:

1. On April 20, 2000, the Commission certified an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, § 15025) and authorized the issuance of Lease No. PRC 8168.9 to Global Photon Systems, Inc. as a rent-free Right-of-Way Permit pursuant to Public Utilities Code section 7901 to construct, install, and operate a fiber optic cable crossing State lands.
2. The EIR, identified as CSLC EIR No. 692, State Clearinghouse No. 99021067, was prepared by CSLC staff and circulated for public review pursuant to the provisions of CEQA. A Mitigation Monitoring Program (MMP) was also prepared in conformance with the provisions of CEQA (Pub. Resources Code, § 21081.6) and was adopted on April 20, 2000. The MMP was implemented during Project construction, which was completed in 2001. Some of the measures from the MMP and specific permit conditions refer to impacts of the fiber optic cable to commercial and recreational fishing for the operation and maintenance of the cable. These measures and permit conditions are still applicable to the use and maintenance of the facilities and have been incorporated into the Lease.
3. On June 27, 2000, the Commission approved the assignment of Lease No. PRC 8168.9 to Global West Network, Inc., effective July 1, 2000. The existing fiber optic line was built in 2001 and operated for approximately 18 months until Global West Network, Inc. went bankrupt and all use of the fiber optic line ceased.
4. On September 21, 2012, Commission staff provided formal written notification to Global West Network, Inc. that Lease No. PRC 8168.9 was terminated pursuant to terms of the permit. Staff determined that there had been no activity or operations of the cable since 2003.
5. opticAccess, LLC is one of two controlling members of X2 Telecom, LLC. X2 Telecom, LLC acquired Global West Network, Inc.'s assets through its wholly-owned subsidiary X2 Acquisitions, LLC pursuant to a series of assignments and a subsequent foreclosure on commercial loans. opticAccess, LLC is now applying for a new General Lease - Right-of-Way Use to restart the operation and maintenance of the existing fiber optic cable.
6. X2 Telecom, Inc. was granted a Certificate of Public Convenience and Necessity (CPCN) by the California Public Utilities Commission (CPUC)

CALENDAR ITEM NO. **C82** (CONT'D)

on June 8, 2009, to operate as a facilities-based carrier of inter-Local Access and Transport Area (LATA) and, to the extent authorized by Decision 94-09-065, intra-LATA telecommunications services offered by communication common carriers in California. X2 Telecom, Inc. was assigned corporate identification number U-7149-C.

7. Pursuant to Public Utilities Code section 7901, telephone corporations may construct and operate lines and equipment along and upon any public road, highway, or the navigable water of the State, without payment of compensation, provided the lines and facilities do not interfere with the public use.
8. The staff recommends that the Commission find that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

9. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

CALENDAR ITEM NO. **C82** (CONT'D)

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease - Right-of-Way Use to opticAccess, LLC, beginning December 2, 2013, for a term of 20 years, for an existing fiber optic cable system as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration to be the public benefit derived from Applicant's acceptance of franchise obligations pursuant to California Public Utilities Code section 7901; liability insurance in an amount no less than \$1,000,000 per occurrence; Bond in the amount of no less than \$1,375,000 for removal and restoration of the buried cable.

EXHIBIT A-1

PRC 8168.9

SANTA BARBARA TO SAN LUIS OBISPO LAND DESCRIPTION

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

BEGINNING at a centerline point of said 10 foot wide strip at Latitude 35° 24' 38.35" North, Longitude 120° 52' 22.49" West located near the Ordinary High Water Mark, thence along said centerline as defined by the following points:

South 77° 37' 55" West 8202.695 meters; to termination point of said centerline on the State of California Offshore Boundary, said point lying on a non-tangent curve, concave to the north having a 5556 meter radius, a radial line to said point bears South 13° 09' 43" West.

The sidelines of said 10 foot wide strip of tide and submerged lands to be prolonged or shortened at said Ordinary High Water Mark, said State of California Offshore Boundary and at angle-point intersections.

EXCEPTING THEREFROM any portion of said ten-foot wide strip of tide and submerged lands lying landward of said Ordinary High Water Mark

The basis of bearing for this description is UTM North American Datum 1983, Zone 11N. All bearings and distances are grid and meters. Geographic positions are based on North American Datum of 1983.

END OF DESCRIPTION

This land description is based on design drawings and may not represent actual centerline location and shall be revised upon the submittal of as-built locations provided by section 2-14 of the lease agreement PRC 8168.

EXHIBIT A-2

PRC 8168.9

MORRO BAY TO MONTEREY LAND DESCRIPTION

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

BEGINNING at a centerline point of said 10 foot wide strip at Latitude 35° 24' 45.00" North, Longitude 120° 52' 24.76" West; thence South 88° 46' 13" West 140.29 meters to a point located near the Ordinary High Water Mark, thence along said centerline as defined by the following points:

South 88° 46' 13" West 1040.54 meters; thence South 85° 40' 19" West 9538.27 meters to termination point of said centerline on the State of California Offshore Boundary, said point lying on a non-tangent curve, concave to the northeast having a 5556 meter radius, a radial line to said point bears South 37° 02' 46" West.

The sidelines of said 10 foot wide strip of tide and submerged lands to be prolonged or shortened at said Ordinary High Water Mark, said State of California Offshore Boundary and at angle-point intersections.

EXCEPTING THEREFROM any portion of said ten-foot wide strip of tide and submerged lands lying landward of said Ordinary High Water Mark.

The Basis of Bearings for this description is UTM North American Datum 1983, Zone 11N. All bearings and distances are grid and meters. Geographic positions are based on North American Datum of 1983.

END OF DESCRIPTION

This land description is based on design drawings and may not represent actual centerline location and shall be revised upon the submittal of as-built locations provided by section 2-14 of the lease agreement PRC 8168.

EXHIBIT A-3

PRC 8168.9

**MANHATTAN BEACH TO SANTA BARBARA
LAND DESCRIPTION**

A ten foot wide strip of tide and submerged lands in the bed of the Pacific Ocean lying between the submerged lands granted to the City of Santa Barbara as shown in Statutes of 1937, Chapter 13, Section 3 and the State of California Offshore Boundary, Santa Barbara County, State of California, the centerline of said strip more particularly described as follows:

BEGINNING at a point on said Grant Boundary at Latitude $34^{\circ} 23' 43.776''$ North, Longitude $119^{\circ} 41' 33.798''$ West, said point lying on a line that bears South $80^{\circ} 31' 14''$ West; thence along the centerline of said 10 foot wide strip South $17^{\circ} 40' 11''$ East 3841.310 meters; thence South $10^{\circ} 16' 09''$ East 1,054.208 meters; thence South $12^{\circ} 53' 02''$ East 128.208 meters to the termination point of said centerline on the State of California Offshore Boundary, said point lying on a non-tangent curve concave to the northwest having a 5556 meter radius that bears North $26^{\circ} 04' 35''$ West. The sidelines of said 10 foot wide strip of tide and submerged lands to be prolonged or shortened at said Grant boundary, said State of California Offshore Boundary and at angle-point intersection.

EXCEPTING THEREFROM any portion of said 10 foot wide strip of tide and submerged lands lying within the Grant to the City of Santa Barbara.

The basis of bearings for this description is UTM North American Datum of 1983 Zone 11N. All bearings and distances are grid and in meters. Geographic positions are based on North American Datum of 1983.

END OF DESCRIPTION

This land description is based on design drawings and may not represent actual centerline location and shall be revised upon the submittal of as-built locations provided by section 2-14 of the lease agreement PRC 8168.

**SANTA BARBARA TO MORRO BAY
LAND DESCRIPTION**

A ten foot wide strip of tide and submerged lands in the bed of the Pacific Ocean lying between the submerged lands granted to the City of Santa Barbara as shown in Statutes of 1937, Chapter 13, Section 3 and the State of California Offshore Boundary, Santa Barbara County, State of California, the centerline of said strip more particularly described as follows:

Parcel 1

BEGINNING at a point on said Grant Boundary at Latitude $34^{\circ} 23' 21.024''$ North, Longitude $119^{\circ} 42' 16.145''$ West, said point lying on a line that bears South $72^{\circ} 14' 56''$ West; thence along the centerline of said 10 foot wide strip South $32^{\circ} 38' 20''$ West 1,694.396 meters; thence South $80^{\circ} 38' 08''$ West 7,360.084 meters; to the termination point of said centerline on the State of California Offshore Boundary, said point lying on a non-tangent curve concave to the north having a 5556 meter radius that bears North $26^{\circ} 56' 34''$ East. The sidelines of said 10-foot wide strip of tide and submerged lands to be prolonged or shortened at said Grant boundary, said State of California Offshore Boundary and angle-point intersection.

Parcel 2

BEGINNING at a point on said State of California Offshore Boundary at Latitude $34^{\circ} 21' 43.927''$ North, Longitude $119^{\circ} 48' 40.400''$ West, said point lying on a non-tangent curve concave to the north having a 5556 meter radius that bears North $30^{\circ} 34' 23''$ West; thence along the centerline of said 10 foot wide strip South $89^{\circ} 53' 58''$ West 8,174.189 meters; thence North $85^{\circ} 32' 12''$ West 73.091 meters; to the termination point of said centerline on the State of California Offshore Boundary, said point lying on a non-tangent curve having a 5556 meter radius that bears North $22^{\circ} 52' 38''$ East. The sidelines of said 10 foot wide strip of tide and submerged lands to be prolonged or shortened at said Grant boundary, said State of California Offshore Boundary and angle-point intersection.

EXCEPTING THEREFROM any portion of said 10 foot wide strip of tide and submerged lands lying within the Grant to the City of Santa Barbara.

The basis of bearings for this description is UTM North American Datum of 1983 zone 11N. All bearings and distances are grid and in meters. Geographic positions are based on North American Datum of 1983.

END OF DESCRIPTION

This land description is based on design drawings and may not represent actual centerline location and shall be revised upon the submittal of as-built locations provided by section 2-14 of the lease agreement PRC 8168.

NO SCALE

SITE MAP

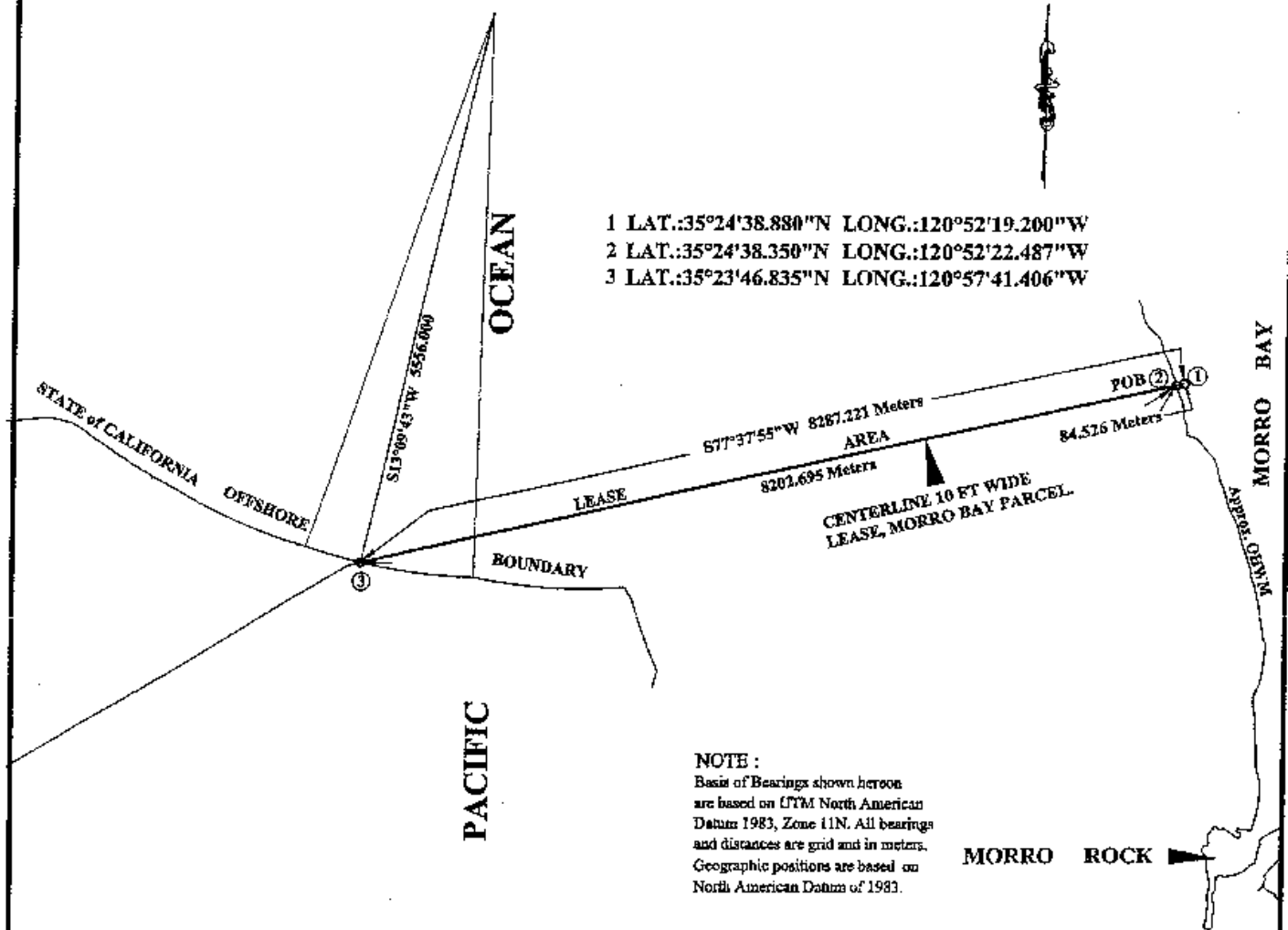


Exhibit B-1

PRC 8168.9
 OPTICACCESS, LLC
 SANTA BARBARA TO
 SAN LUIS OBISPO
 NORTH LANDING



PRELIMINARY - CONCEPTUAL ONLY
 Actual position will vary from this land description and plat. Final land description and plat will be based on asbuilt cable locations supplied by the lessee.

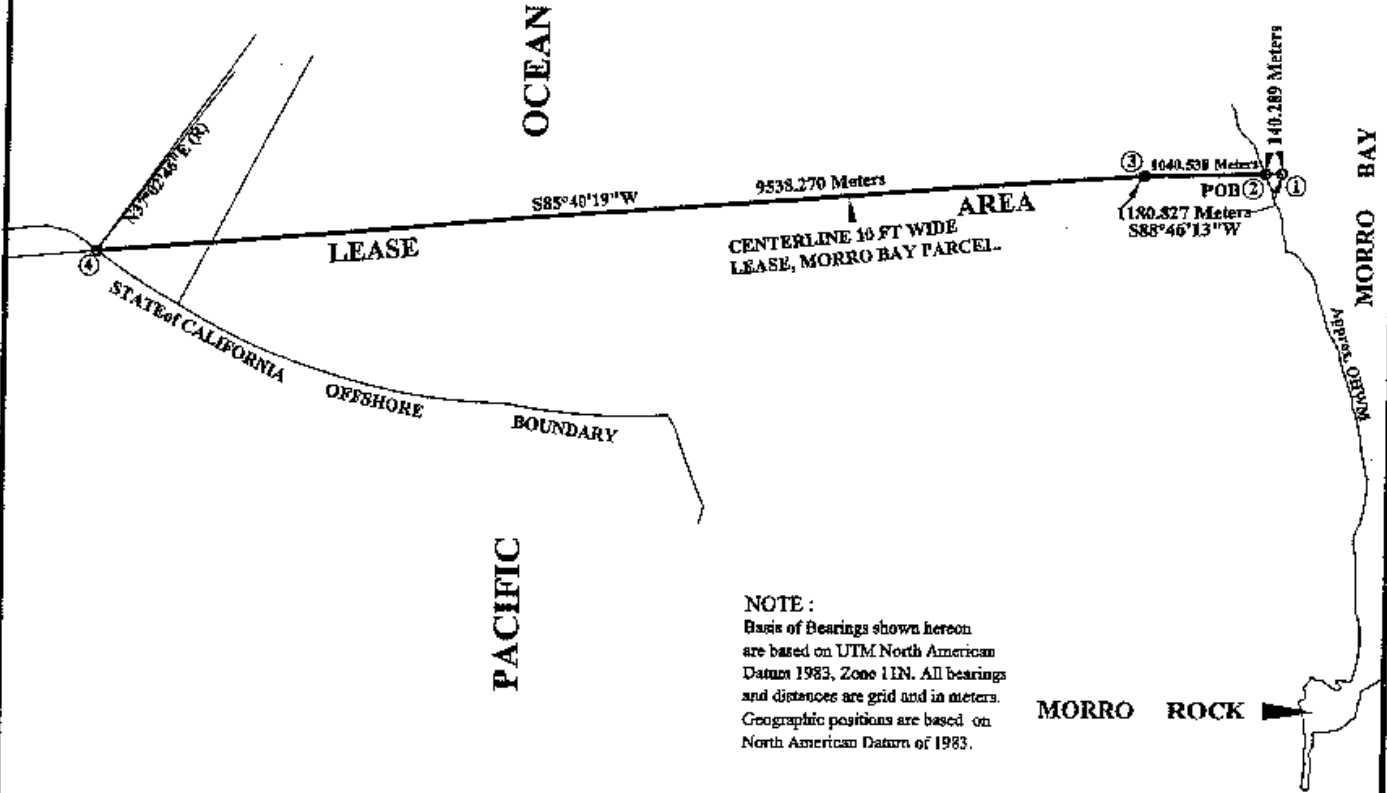


This Exhibit is solely for purposes of generally defining the lease premises, and is not intended to be, nor shall it be construed as, a waiver of limitation of any state interest in the subject or any other property.

NO SCALE

SITE MAP

- 1 LAT.:35°24'45.000"N LONG.:120°52'19.280"W
- 2 LAT.:35°24'45.000"N LONG.:120°52'24.760"W
- 3 LAT.:35°24'45.000"N LONG.:120°53'06.000"W
- 4 LAT.:35°24'28.088"N LONG.:120°59'23.466"W



NO SCALE

LOCATION MAP



Exhibit B-2

PRC 8168.9
 OPTICACCESS, LLC
 MORRO BAY TO
 MONTEREY
 SOUTH END



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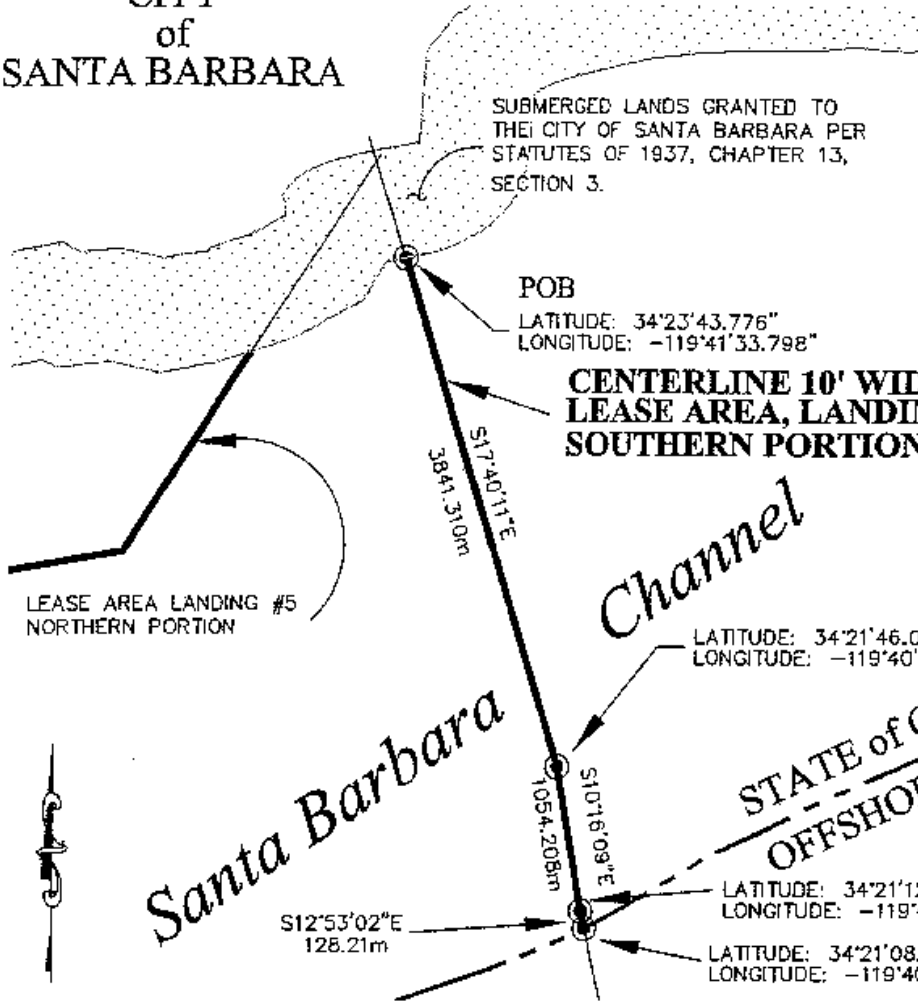
NO SCALE

SITE MAP

CITY
of
SANTA BARBARA

NOTE :

Basis of Bearings shown hereon are based on UTM North American Datum 1983, Zone 11N. All bearings and distances are grid and in meters. Geographic positions are based on North American Datum of 1983.



NO SCALE

LOCATION MAP



Exhibit B-3

PRC 8168.9
OPTICACCESS, LLC
MANHATTAN BEACH TO
SANTA BARBARA



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NO SCALE

SITE MAP

CITY
of
SANTA BARBARA

SUBMERGED LANDS GRANTED TO
THE CITY OF SANTA BARBARA PER
STATUTES OF 1937, CHAPTER 13,
SECTION 3

CENTERLINE 10' WIDE
LEASE AREA, LANDING #5
NORTHERN PORTION
PARCEL 1

POB PARCEL 1

LATITUDE: 34°23'21.024"
LONGITUDE: -119°42'16.145"

S32°38'20"W
1694.396m

S80°38'08"W
7360.084m

LATITUDE: 34°22'33.960"
LONGITUDE: -119°42'50.400"

Santa Barbara

Channel

STATE of CALIFORNIA
OFFSHORE BOUNDARY

LATITUDE: 34°21'48.731"
LONGITUDE: -119°47'33.132"

SEE SHEET 2 of 2

NOTE :

Basis of Bearings shown hereon
are based on UTM North American
Datum 1983, Zone 11N. All bearings
and distances are grid and in meters.
Geographic positions are based on
North American Datum of 1983.

NO SCALE

LOCATION MAP



Exhibit B-4

PRC 8168.9
OPTICACCESS, LLC
SANTA BARBARA
TO MORRO BAY

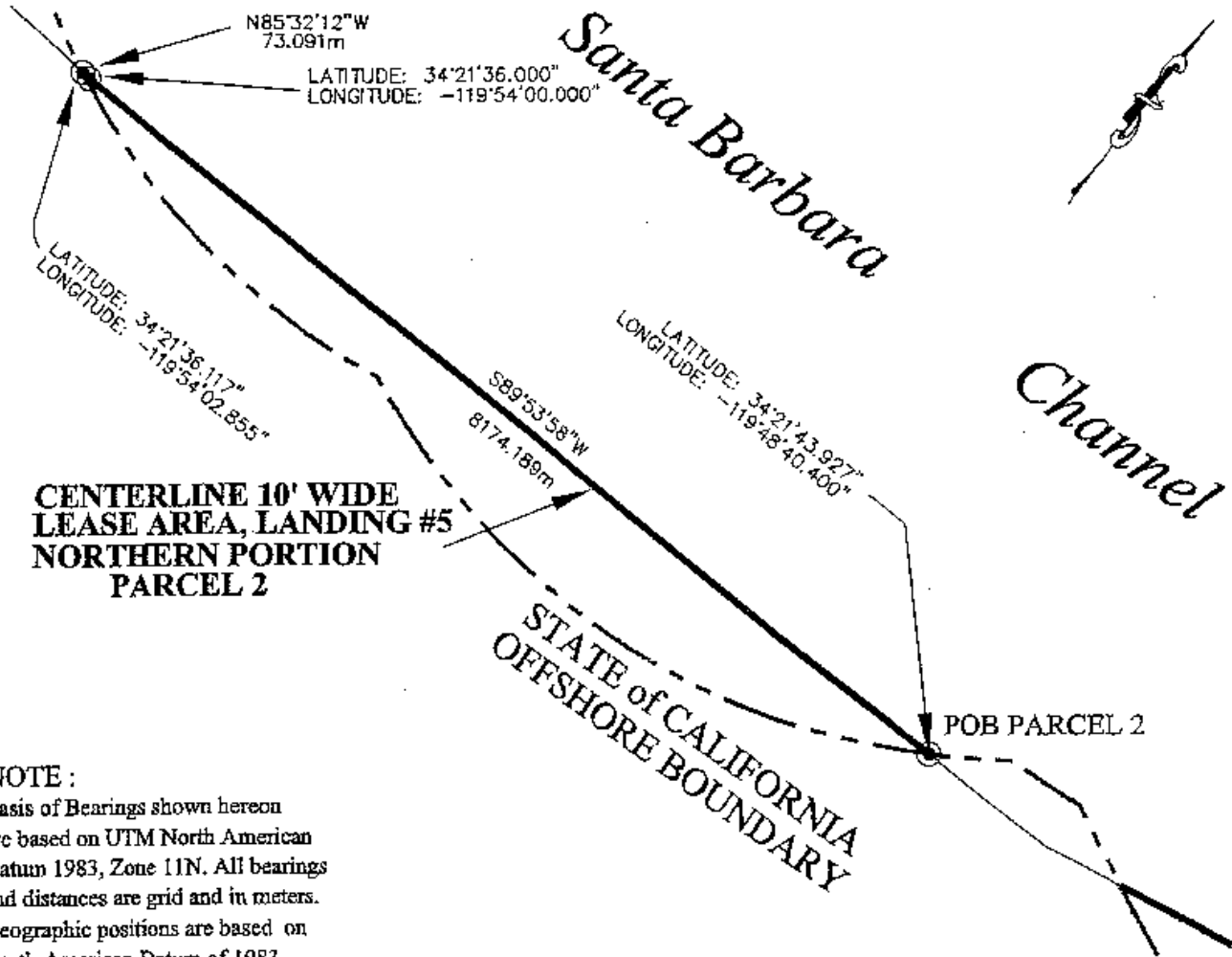
SHEET 1 OF 2



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NO SCALE

SITE MAP



CENTERLINE 10' WIDE LEASE AREA, LANDING #5 NORTHERN PORTION PARCEL 2

STATE OF CALIFORNIA OFFSHORE BOUNDARY

POB PARCEL 2

SEE SHEET 1 of 2

NOTE :

Basis of Bearings shown hereon are based on UTM North American Datum 1983, Zone 11N. All bearings and distances are grid and in meters. Geographic positions are based on North American Datum of 1983.

NO SCALE

LOCATION MAP



Exhibit B-4

PRC 8168.9
OPTICACCESS, LLC
SANTA BARBARA
TO MORRO BAY
SHEET 2 OF 2



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SITE