

**CALENDAR ITEM
C39**

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12/06/16

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PRC 8151.1

S. Avila

ASSIGNMENT AND AMENDMENT OF LEASE, AND REVISION OF RENT

LESSEE/ASSIGNOR:

G.T. Landing II Corp.

ASSIGNEE:

Level 3 Communications, LLC

LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, city of Grover Beach, San Luis Obispo County.

AUTHORIZED USE:

Use and maintenance of an existing 5.25-inch-diameter steel conduit cable and one fiber optic cable.

LEASE TERM:

15 years, beginning April 20, 2010.

CONSIDERATION:

This lease provides that the Commission may modify the rent periodically during the lease term. Pursuant to this provision, staff has conducted a review of the rent under this lease, and recommends rent be revised from \$113,500 to \$128,045 per year, effective April 20, 2017.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Surety Bond in the amount of \$500,000.

PROPOSED AMENDMENT:

Lease Section 2, "Special Provisions," Paragraph 11 is deleted in its entirety and is replaced with the following:

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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 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 a qualifying event, and 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 a Remotely Operated Vehicle (ROV) equipped with video capable of producing still images and by a third party agreed to by the permitting agencies. 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, 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 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.

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STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, and 6501.1; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

On December 10, 2010, the Commission authorized a General Lease – Non-Exclusive Right-of-Way Use to GT Landing II Corp., for a term of 15 years ([Calendar Item C38, December 10, 2010](#)) for the use and maintenance of one 5.25-inch-diameter steel conduit and one fiber optic cable. The fiber optic cable is used to carry digital communications traffic including voice, data, and video for the regional population. On December 31, 2012, GT Landing II Corp. merged with Level 3 Communications, LLC (Applicant).

The Applicant is now applying for an assignment of lease, and a lease amendment to modify the requirement to conduct burial inspection surveys of the ocean floor every 5 years in the lease area. The survey requirement is intended to identify whether the conduit has become unburied and could become a snag hazard for commercial trawling operations. The provision was included in the lease to satisfy the concerns of commercial fishermen that operated bottom trawling vessels in the lease area at the time of lease inception. The last survey was conducted in August 2015 and found no evidence that the conduit has become unburied nor that any fishing gear had become snagged on it. At this time, virtually no commercial bottom trawling occurs in the lease area, nor is any anticipated during the remaining lease term, so there is little if any risk of entanglement even if the conduit becomes exposed. The commercial fishermen that continue to operate in the lease area using other capture means are negatively impacted by the surveys, as they are required to remove fishing equipment prior to each survey, and must remain clear of the area while vessels are conducting the surveys. The proposed amendment enhances Public Trust uses by modifying a now largely unnecessary survey requirement that hinders commercial fishing in the area, rather than enhancing it.

The assignment of lease will not result in a change in the use of Public Trust resources or the impacts thereto. Staff believes approval of this assignment is consistent with the common law Public Trust Doctrine and

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is in the best interests of the State. Furthermore, the proposed assignment will not substantially interfere with Public Trust uses at this location during the term of the lease.

The amendment of lease will not result in a change in the use of Public Trust resources or the impacts thereto. Staff believes approval of this amendment is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

The proposed lease amendment does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 15-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust consistent uses. The buried telecommunication cables do not substantially interfere with the public right of navigation or access. Upon termination of the lease, the lessee may be required to remove all improvements from State land. The revision of rent is an administrative action unlikely to result in any changes to the use of the lease premises.

The lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the use of public land. For all the reasons above, Commission staff believes the recommended actions are consistent with the common law Public Trust Doctrine, will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease, and are in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The lease assignment and amendment are 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 revision of rent is consistent with strategy 2.2 of the Commission's Strategic Plan to ensure timely receipt of revenues and royalties from the use and development of State lands and minerals.

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3. **Revision of Rent and Assignment of Lease:** Approving the revision of rent and authorizing the assignment of lease are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions 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).

4. **Amendment of Lease:** A Mitigated Negative Declaration (MND), State Clearinghouse No. 2000011036, was prepared by the California State Lands Commission and adopted on April 20, 2000, for this project ([Calendar Item C10, April 20, 2000](#)).

A Mitigation Monitoring Program was adopted by the California State Lands Commission.

5. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is 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 MND, CSLC MND No. 700, State Clearinghouse No. 2000011036, and a Mitigation Monitoring Program were prepared by Commission staff and adopted by the Commission on April 20, 2000.

Find that the Commission reviewed and considered the information contained in the previously adopted MND, and that in the Commission's independent judgment, the scope of the lease amendment to be carried

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out under this authorization have been adequately analyzed, that none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impacts has occurred, and therefore, no additional CEQA analysis is required.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially interfere with public rights to navigation and fishing or with the Public Trust needs and values at this location at this time, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

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:

1. Authorize the assignment of Lease No. PRC 8151.1, a General Lease – Non-Exclusive Right-of-Way Use, of sovereign land as described in Exhibit A, Land Description, and shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof, from GT Landing II Corp., to Level 3 Communications, LLC, effective December 31, 2012.
2. Authorize the amendment of Lease No. PRC 8151.1, to replace the current cable burial inspection survey schedule and terms in Lease Section 2 “Special Provisions”, Paragraph 11 with new terms as described herein; all other terms and conditions of the lease will remain in effect without amendment.
3. Approve the revision of rent for Lease No. PRC 8151.1 from \$113,500 to \$128,045 per year, effective April 20, 2017.

**EXHIBIT A
LAND DESCRIPTION**

A ten foot (3.048 meter) 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 west of San Luis Obispo County, State of California, the centerline of said strip being more particularly described as follows:

Commencing at a point located in Pismo Grant, Township 32 South, Range 12 East, Mount Diablo Base Meridian having a Latitude 35° 08' 34.15204" North and a Longitude 120° 38' 16.69987" West, said point being a 3-5/8 inch brass disk stamped PELLETT 1974, set in the top of a 14 inch concrete cylinder projecting 6 inches above the ground; thence South 07° 04' 38" East 2305.535 meters to a point on said Ordinary High Water Mark, said point being the POINT OF BEGINNING having a Latitude 35° 07' 19.7200" North and a Longitude 120° 38' 07.6300" West; thence South 74° 56' 49" West 1193.032 meters; thence South 66° 46' 35" West 466.651 meters; thence South 68° 30' 20" West 4186.154 meters; thence South 73° 56' 51" West 1151.842 meters more or less to a point on said State of California Offshore Boundary, said point being the POINT OF TERMINATION.

The sidelines of said ten foot (3.048 meter) wide strip of tide and submerged lands to be prolonged or shortened to terminate at said Ordinary High Water Mark and said State of California Offshore Boundary and at angle point intersections.

EXCEPTING THEREFROM any portion of said ten foot (3.048 meter) wide strip of tide and submerged lands lying landward and easterly of said Ordinary High Water Mark and waterward and westerly of said State of California Offshore Boundary.

Geographic coordinate(s) are based on NAD83. Bearings and distances are grid in meters, based on UTM, Zone 10N, NAD83.

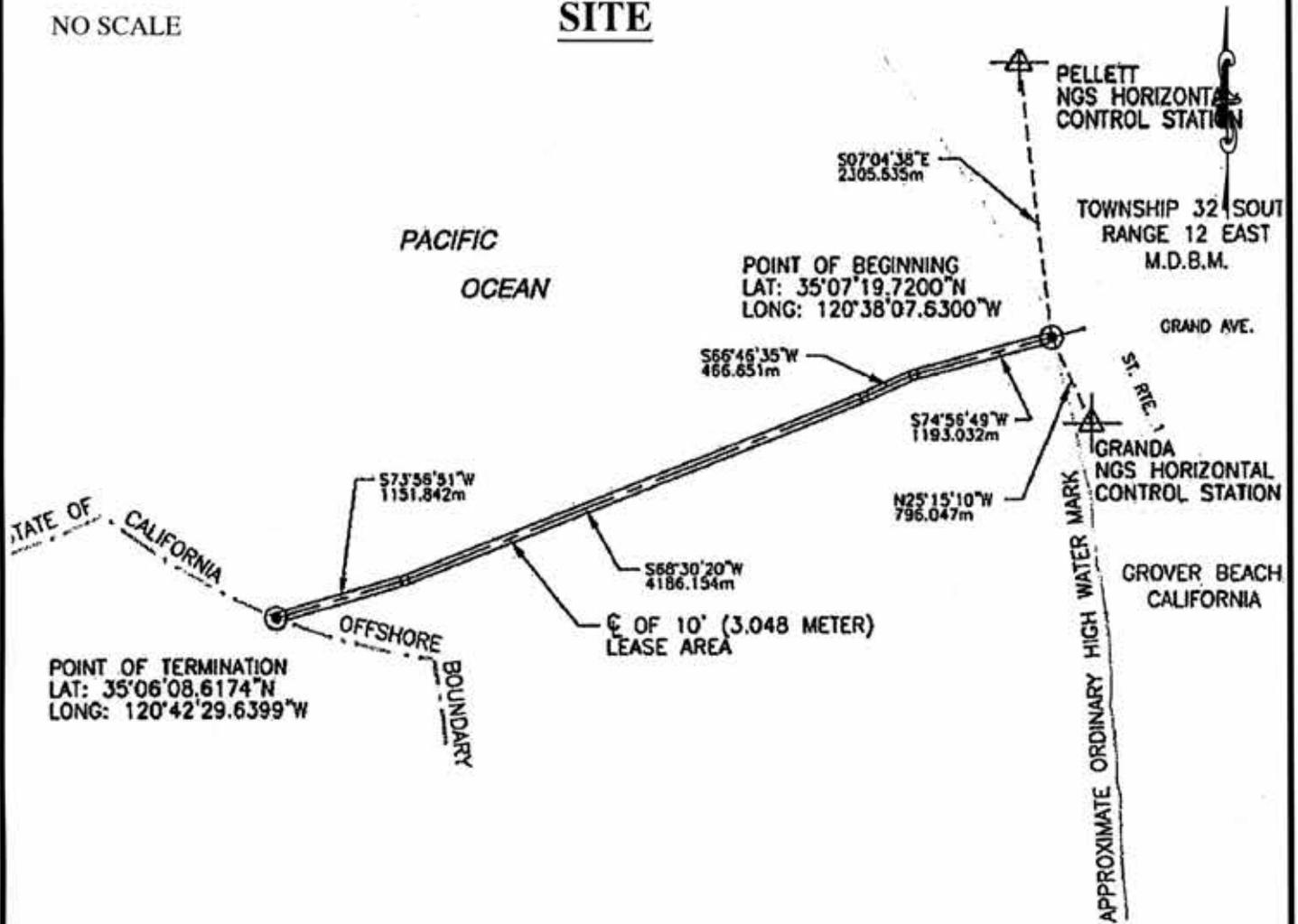
Positional information for Land Description is based on "PAC-1 Segment 1 (Grover Beach-BU1) Route Position List-As Laid, Issue No. 8, February 19, 2003" provided by Thales GeoSolutions (Pacific), Inc.

END OF DESCRIPTION



NO SCALE

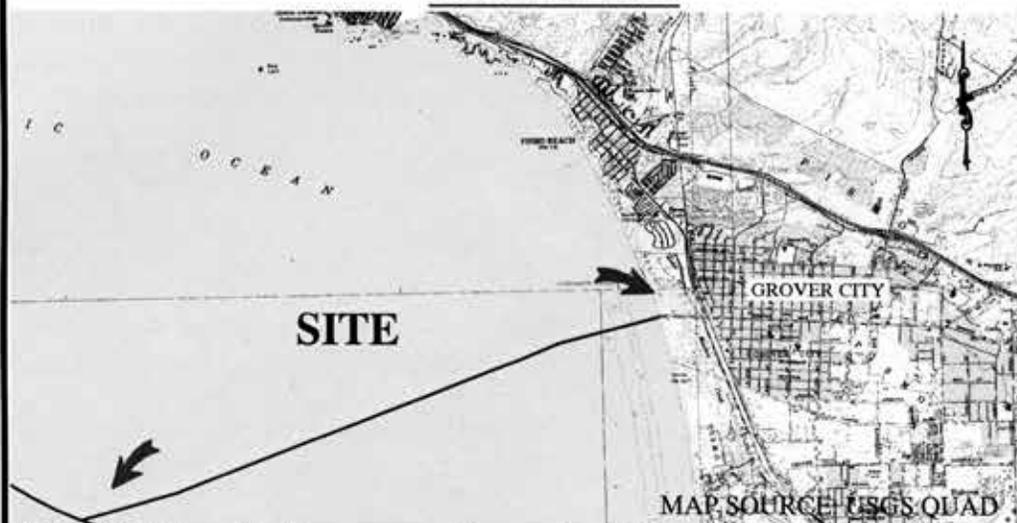
SITE



GROVER BEACH EXISTING STEEL CONDUIT & FIBER OPTIC CABLE

NO SCALE

LOCATION



SITE

MAP SOURCE: USGS QUAD

Exhibit B

PRC 8151.1

LEVEL 3

COMMUNICATIONS, LLC
GENERAL LEASE -
RIGHT-OF-WAY USE
SAN LUIS OBISPO CO.



SITE

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.