

**STAFF REPORT
C56**

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11/29/17
PRC 8278.1
D. Simpkin

AMENDMENT OF LEASE

LESSEE:

AT&T Corp.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Pacific Ocean, offshore of Morro Bay, San Luis Obispo County.

AUTHORIZED USE:

Continued use and maintenance of one 6-inch-diameter steel conduit and one fiber optic cable.

LEASE TERM:

15 years, beginning April 20, 2011.

CONSIDERATION:

\$166,060 per year with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

PROPOSED AMENDMENTS:

Amend the lease to:

1. Authorize the removal of one fiber optic cable.
2. Adjust the annual rent from \$166,060 to \$4,030 per year to reflect the reduced lease area, effective April 20, 2018, or the anniversary date following removal of the fiber optic cable, whichever is later.
3. Include Special Provisions regarding the existing steel conduit.
4. Replace Section 3, Land Description with new Exhibit A, Land Description, and Exhibit B, Site and Location Map.

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, 6501.1, and 6503;
California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On April 6, 2011, the Commission authorized a General Lease – Non-Exclusive Right-of-Way Lease No. 8278.1, to AT&T Corp. for the continued use and maintenance of one 6-inch-diameter steel conduit and one fiber optic cable (China-US segment E1) ([Item C53, April 6, 2011](#)).

Fiber optic cable segment E1 is part of the China-U.S. Cable Network, a submarine telecommunications network linking several countries in the Asia-Pacific region. The network is owned by a consortium of which AT&T is a member. As part of the consortium, AT&T was responsible for installing segment E1 in 2000. Although expected to operate for 25 years, segment E1 is now obsolete, and it was retired from service in December 2016.

AT&T is now requesting authorization to remove the cable. Pursuant to the lease terms, AT&T submitted and staff reviewed a Project Execution Plan which covers cable removal procedures. In addition, staff prepared an Addendum to Environmental Impact Report (EIR) No. 698, State Clearinghouse No. 99051063. The original EIR, certified by the Commission in 2000 ([Item C13, April 20, 2000](#)), analyzed the potential significant environmental effects associated with installation of segment E1 and also, more broadly, the potential significant environmental effects associated with cable removal, and concluded that removal would have impacts similar to or less than installation. Staff prepared the Addendum to the EIR because changes or additions to the 2000 EIR are needed but such modifications do not require preparation of a subsequent EIR (see State CEQA Guidelines, §§ 15164 and 15162). The additions include implementation by AT&T as part of the cable removal project of the following Applicant Proposed Measures (APMs):

- APM-1. Marine Safety and Anchoring Plan
- APM-2. Oil Spill Contingency and Response Plan
- APM-3. Marine Wildlife Mitigation and Training Plan
- APM-4. Non-Native Aquatic Species Introduction Prevention
- APM-5. Equipment Specifications and Emissions Reduction Plan

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- APM-6. Local Notice to Mariners
- APM-7. Notification of Morro Bay Joint Cable/Fisheries Liaison Committee, Morro Bay Harbormaster, Morro Bay and Port San Luis Commercial Fishermen's Associations, and other local fishermen who request it

Although the existing fiber optic cable will be fully removed, the existing 6-inch-diameter steel conduit will remain in place. The conduit originates from the parking lot adjacent to Montaña de Oro State Park and extends approximately 806 feet into the Pacific Ocean. As part of the lease amendment, AT&T will be authorized to maintain the existing conduit, but will be required to submit a site restoration plan for staff review and approval, for removal of the improvement no later than April 20, 2021. The site restoration plan is to be implemented no later than April 20, 2023. Alternatively, AT&T may submit a lease amendment application for continued use of the conduit should use of the conduit be deemed feasible.

The existing steel conduit has existed for many years at this location and does not significantly alter the land. The lease amendment does not alienate the State's fee simple interest, and neither permanently impairs public rights.

The lease amendment also 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 and insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon.

For all the reasons above, staff believes the issuance of the lease amendment is consistent with the common law Public Trust Doctrine and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. AT&T is also proposing to remove fiber optic cable segment S7 which is part of the China-U.S. Cable Network. The cable removal is subject to a separate staff report and Commission authorization (PRC 8154.1) which is also on the Commission's November 29, 2017 agenda.
2. As part of the Commission's Tribal coordination efforts, on October 3, 2017, staff sent a consultation opportunity notification to the Chair of the Xolon Salinan Tribe and Tribal outreach letters to six other Tribes

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identified by the Native American Heritage Commission. One response, from the Santa Ynez Band of Chumash Indians, was received before finalizing the Addendum, deferring comments to the yak tityu tityu – Northern Chumash Tribe. After the Addendum was posted on the Commission’s website, the Commission received 2 additional letters. One letter, from the Xolon Salinan Council Chair, confirmed that the project area falls within the Tribe’s area of traditional and cultural affiliation and that the Morro and Estero Bay area is known to be culturally sensitive. While the Tribe was not aware of any specific sites within the removal alignment, it expressed concern about the beach area. The other letter, from the Chairwoman of the yak tityu tityu – Northern Chumash Tribe, stated that the project was within culturally sensitive areas and asked for additional information. In follow up discussions with both Tribal Chairs, Commission staff reinforced that there would be no disturbance to the beach area as a result of the cable removal project because the cables run through existing conduits approximately 85 feet beneath the beach and those conduits will remain in place for possible future reuse, and that the offshore segments would be pulled from the seafloor without trenching or water-jetting in order to minimize disturbance of any undiscovered resources that may be present. After these discussions, the Tribes confirmed they had no additional questions or concerns.

3. 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.
4. Pursuant to the Commission’s delegation of authority and the State California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, § 15025), Commission staff prepared an EIR for the original project identified as the AT&T China-U.S. Cable Project, CSLC EIR No. 698, State Clearinghouse No. 99051063. The EIR was prepared and circulated for public review pursuant to the provisions of CEQA and certified by the Commission together with adoption of a Mitigation Monitoring Program and CEQA Findings on April 20, 2000 ([Item C13, April 20, 2000](#)). The original project was for the installation of the cable; however, the EIR also considered removal of the cable upon the end of the operational life subject to future environmental review by the Commission and permitting from the appropriate agencies. In November 2017, staff prepared an Addendum to the EIR analyzing the removal project and posted the Addendum on the [Commission website](#). The evaluation contained in the Addendum, based on substantial evidence,

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found that no new or more severe significant effects will occur as a result of removing the cable.

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.

FURTHER APPROVALS REQUIRED:

California Coastal Commission
U.S. Army Corps of Engineers
Central Coast Regional Water Quality Control Board

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the Commission certified the AT&T China-U.S. Cable Project, CSLC EIR No. 698, State Clearinghouse No. 99051063, and adopted a Mitigation Monitoring Program and CEQA Findings on April 20, 2000 ([Item C13, April 20, 2000](#)); that the Commission has reviewed and considered the information contained therein and in the Addendum prepared by staff in November 2017 available on the [Commission website](#); that in the Commission's independent judgment, the scope of activities to be carried out under the lease amendment has been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or the State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impacts will occur, and therefore, no additional CEQA analysis is required. Because both the 2000 EIR and the Addendum cover the cable removal project activities, both the Mitigation Monitoring Program and CEQA Findings remain valid.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease amendment for the removal of the E1 fiber optic cable, and continued maintenance of the existing steel conduit will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this

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location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

SIGNIFICANT LANDS INVENTORY FINDINGS:

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 amendment of Lease No. PRC 8278.1, a General Lease – Non-Exclusive Right-of-Way Use, effective November 29, 2017, to allow for the removal of fiber optic cable China-US segment E1, and replace the existing Section 3, Land Description, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only).
2. Revise rent from \$166,060 per year to \$4,030 per year, effective April 20, 2018, or the anniversary date following removal of the fiber optic cable, whichever is later.
3. Amend the special provisions of the lease to require the Lessee to submit a site restoration plan for removal of the existing conduit, no later than April 20, 2021 and to be implemented no later than April 20, 2023, unless the Lessee submits a lease amendment application for continued use of the conduit should use of the conduit be deemed feasible.
4. Authorize the Executive Officer or designee to approve the site restoration plan if submitted by the Lessee.

EXHIBIT A

PRC 8278.1

LAND DESCRIPTION

A ten foot (3.048 meter) wide strip of tide and submerged land lying in the bed of the Pacific Ocean, County of San Luis Obispo, State of California, the centerline of said strip being more particularly described as follows:

BEGINNING at a utility manhole cover located within the Southwest Quarter of Section 23, Township 30 South, Range 10 East, MDM., from which a standard bronze Coast & Geodetic Survey disk stamped "ZARD 1933" bears South 67°40'18" West 349.20 meters, said manhole cover having a Latitude of 35°18.019' North and a Longitude of 120°52.342' West, North American Datum 1983; thence North 66°40'29" West 1214.97 meters to the POINT OF TERMINATION of said centerline.

The sidelines of said strip are to be lengthened or shortened as to begin at the Ordinary High Water Mark of the Pacific Ocean and terminate at the line perpendicular to said terminus of said centerline.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of the Pacific Ocean.

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

END OF DESCRIPTION

Prepared October 9, 2017 by the California State Lands Commission Boundary Unit.



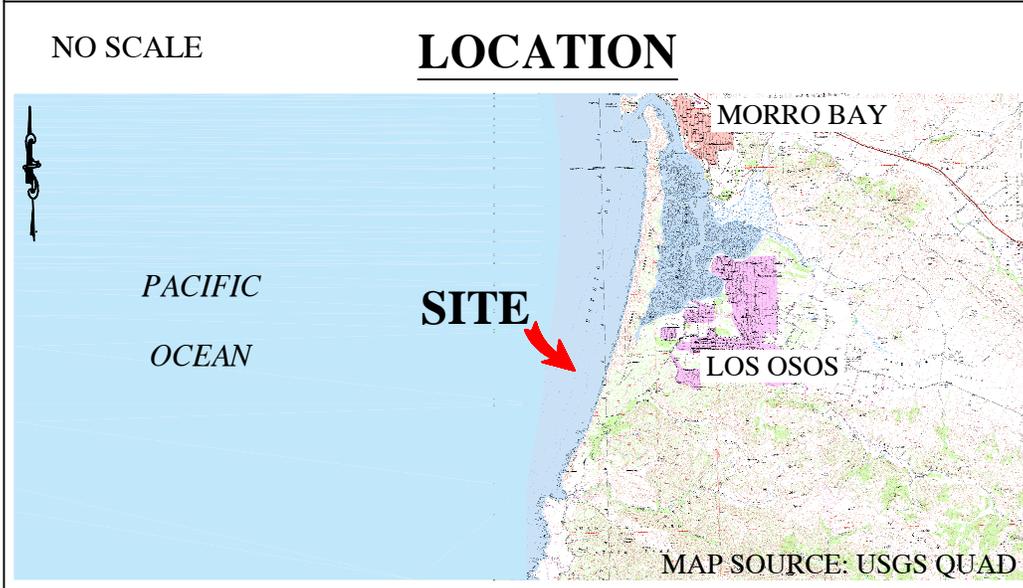
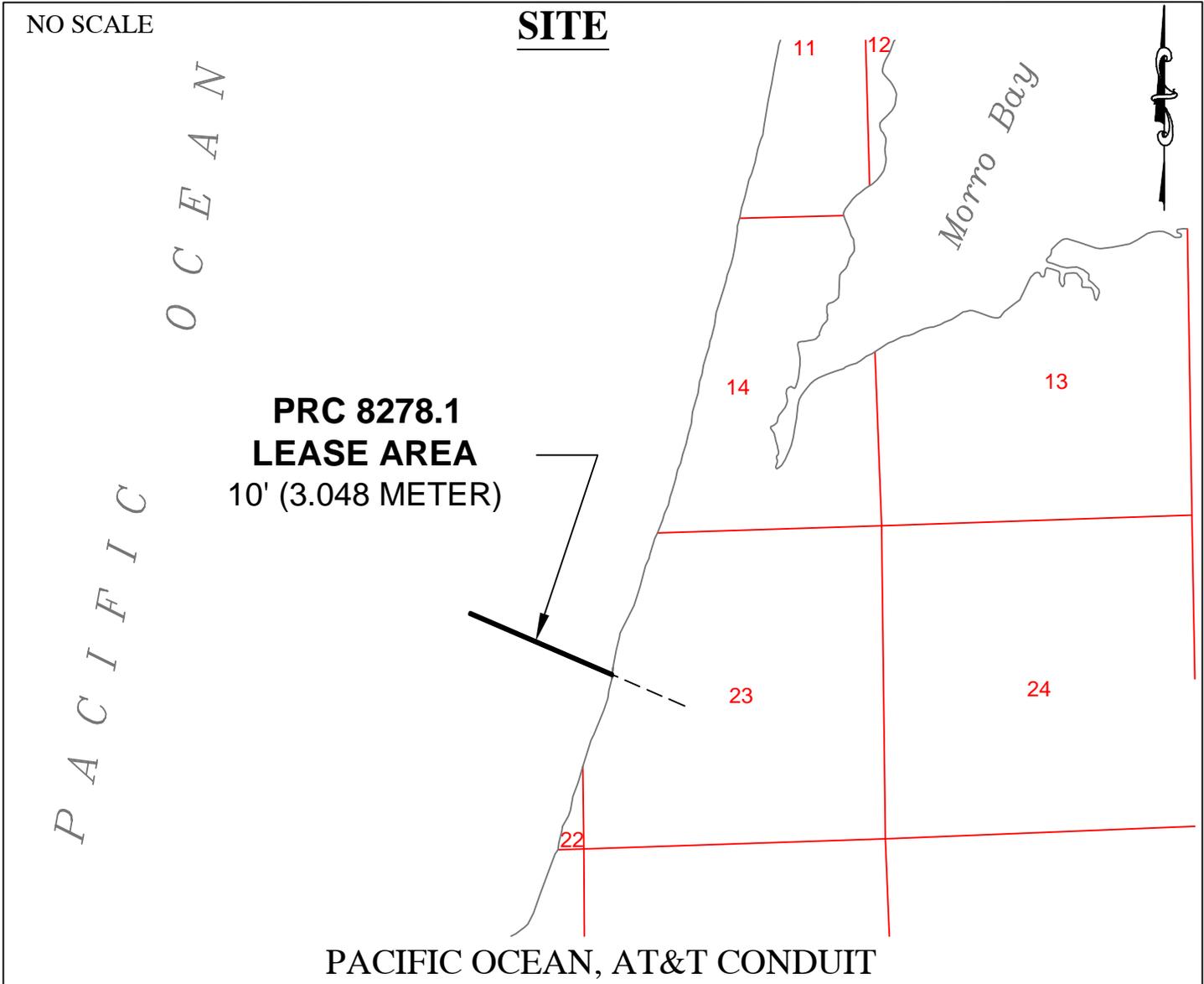


Exhibit B

PRC 8278.1
AT&T CORP.
GENERAL LEASE -
RIGHT-OF-WAY USE
SAN LUIS OBISPO CO.



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.