

**STAFF REPORT
C50**

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12/03/18
PRC 8144.1
L. Pino

GENERAL LEASE – RIGHT-OF-WAY USE

APPLICANT:

AT&T Corporation

PROPOSED LEASE:

LAND TYPE AND LOCATION:

Sovereign land in the Pacific Ocean, near Los Osos, San Luis Obispo County.

AUTHORIZED USE:

Use and maintenance of an existing 5-inch-diameter near-shore conduit and buried fiber-optic cable for the Asia-America Gateway Fiber-Optic Cable System.

LEASE TERM:

25 years, beginning March 2, 2019.

CONSIDERATION:

\$121,035 per year with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Under the new lease AT&T would be required to inspect the portion of the conduit or cable affected by a qualifying event, such as, an earthquake or snag. Within 10 days of the reporting or other identification of a qualifying event, AT&T shall submit written notice of the location and nature of the qualifying event and the location and timing of the proposed survey, for review and approval by staff. If warranted, staff may direct AT&T to conduct a complete survey of the entire length.
- Insurance: Liability coverage in an amount no less than \$1,000,000 per occurrence.
- Bond: \$2,000,000.

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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 February 8, 2000, the Commission authorized the issuance of Lease No. PRC 8144.1 (Lease), a 10-year General Lease – Right-of-Way Use, to MFS Globenet, Inc., for installation (via directional boring) and maintenance of a proposed 6-inch-diameter steel conduit, beginning on February 8, 2000, and ending on February 7, 2010, with the right to renew for an additional 15-year period ([Item C05, February 8, 2000](#)). In this action, the Commission also authorized the future assignment of the lease to the AT&T Corporation (AT&T), on the understanding that at some point during the lease term AT&T would take over the improvements and the Lease.

On March 2, 2009, the Commission authorized the termination of the existing General Lease – Right-of-Way Use to MFS Globenet; certified an environmental impact report; and authorized the issuance of a new 10-year General Lease – Right-of-Way Use, to AT&T for the installation, use, and maintenance of a fiber optic cable placed into the previously authorized steel conduit; the previous lease authorized the installation of a 6-inch conduit, however, a 5-inch conduit was actually installed ([Item C01, March 2, 2009](#)). The lease area is a portion of Segment 5 (Segment 5) of the Asia-America Gateway fiber-optic cable system. This lease commenced on March 2, 2009 and will expire March 1, 2019. It contains an option to renew for an additional 15-year period. This lease required that a post-burial survey be completed within 12 months of cable installation and two subsequent cable-burial surveys within the first 4 years of the lease, with any subsequent burial inspection at the Commission's discretion.

The current lease area consists of an existing buried 5-inch-diameter steel conduit and fiber-optic cable extending into the Pacific Ocean. The portion of Segment 5 occupying sovereign land extends approximately 24,207 feet along the ocean floor. While the use of sovereign land for the placement of a fiber-optic cable does not promote the Public Trust, it also does not substantially interfere with Public Trust uses, needs, or values at this location, at this time.

The proposed lease would allow AT&T to continue to operate and maintain the Asia-America Gateway network, which is a piece of critical

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communications infrastructure facilitating data communications across the Pacific between Asia and the United States. The current cable has been in operation for approximately 9 years.

The last burial inspection for Segment 5 was completed in September 2015. The survey indicated that the cable had not moved in an appreciable manner between the 2010 and 2015 surveys. Therefore, AT&T has requested that the regular periodic cable-burial survey requirement of their current lease be changed under the new lease. Under the proposed terms of the new lease, a survey would be required only upon a qualifying event, such as a snag or earthquake. Additionally, as a matter of consistency for its other fiber-optic cable leases, AT&T has also applied to amend its other leases, No. PRC 8204.1 and No. PRC 8203.1 (for Segments 8 and 9 of the Japan-USA fiber-optic cable network), to reflect the same language.

Under the proposed new lease, 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. If no qualifying event has occurred since the last burial survey, then the proposed lease requires the Lessee to submit a written statement to the Commission's Executive Officer and to the CCC to that effect.

The initial 12- to 24-month inspection interval under the current lease was selected when the lease was originally issued in 2000 because of the relatively unknown impact that subsurface fiber-optic cables and conduits 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, disrupting vessel navigation and commercial fishing operations. The burial inspection requirement was included to allow monitoring for possible impacts. Since the cable's installation, there have been no known interactions between the buried cables and commercial fishing activities or vessel anchors in the area. For the reasons stated above staff concurs that regular burial surveys are not needed or warranted, at this time and at this location.

The Central California Joint/Cable Fisheries Liaison Committee's fishing party members, key stakeholders who operate in the nearby Morro Bay and Port San Luis areas, and who supported the current inspection

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intervals, have also expressed support for the new proposed cable verification survey interval.

The improvements have existed at this location for many years and do not significantly alter the land. The proposed lease is limited to a 25-year term and does not alienate the State's fee simple interest or grant the lessee exclusive rights to the lease premises, nor does it permanently impair any public rights. The proposed lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved; and requires that the lessee 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 Los Osos, 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 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 Asia-America Gateway fiber-optic cable was installed by horizontal directional drilling below the beach and surf zone and currently lies buried beneath the seafloor 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 surveys, inspections, and maintenance of the cables as needed or required by law should avoid or minimize future climate change-related impacts.

Conclusion:

For the reasons stated above, staff believes the issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, or other Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed 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.

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2. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (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.

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).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, or other Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease - Right-of-Way Use to the Applicant beginning March 2, 2019, for a term of 25 years, for the existing conduit and fiber-optic cable; as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$121,035 with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$1,000,000 per occurrence; surety bond in the amount of \$2,000,000.

EXHIBIT A

PRC 8144.1

LAND DESCRIPTION

A one foot (0.348 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:

COMMENCING at a point located in Section 23, Township 30 South, Range 10 East, Mount Diablo Base and 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 $N67^{\circ}16'39''E$ a distance of 353.683 meters to a utility manhole cover having a Latitude of $35^{\circ}18'01.2659''$ North and Longitude $120^{\circ}52'20.3895''$ West, said point being the POINT OF BEGINNING;

Thence $N72^{\circ}23'14''W$, 1219.214 meters; thence $N73^{\circ}27'17''W$, 53.326 meters; thence $N48^{\circ}52'34''W$, 53.532 meters; thence $N85^{\circ}48'34''W$, 31.367 meters; thence $N53^{\circ}25'09''W$, 79.044 meters; thence $N53^{\circ}25'20''W$, 99.567 meters; thence $N46^{\circ}02'51''W$, 459.932 meters; thence $N59^{\circ}53'12''W$, 91.038 meters; thence $N30^{\circ}26'17''W$, 36.020 meters; thence $N00^{\circ}25'21''W$, 10.911 meters; thence $N04^{\circ}07'28''E$, 27.673 meters; thence $N05^{\circ}32'33''E$, 45.064 meters; thence $N04^{\circ}58'48''E$, 74.403 meters; thence $N05^{\circ}03'31''E$, 171.897 meters; thence $N01^{\circ}39'57''E$, 90.356 meters; thence $N13^{\circ}32'09''E$, 58.324 meters; thence $N15^{\circ}22'27''E$, 197.972 meters; thence $N20^{\circ}46'46''E$, 98.325 meters; thence $N28^{\circ}07'02''E$, 618.987 meters; thence $N19^{\circ}55'34''E$, 67.215 meters; thence $N10^{\circ}19'05''W$, 40.264 meters; thence $N05^{\circ}17'33''W$, 66.184 meters; thence $N10^{\circ}31'50''W$, 46.847 meters; thence $N43^{\circ}25'28''W$, 53.921 meters; thence $N46^{\circ}10'59''W$, 301.331 meters; thence $N64^{\circ}38'45''W$, 27.282 meters; thence $N77^{\circ}22'13''W$, 106.608 meters; thence $N77^{\circ}20'35''W$, 191.229 meters; thence $N77^{\circ}47'53''W$, 306.775 meters; thence $N77^{\circ}18'11''W$, 1518.598 meters; thence $N73^{\circ}01'01''W$, 138.616 meters; thence $S88^{\circ}47'38''W$, 75.315 meters; thence $S89^{\circ}04'51''W$, 73.952 meters; thence $S89^{\circ}18'35''W$, 495.252 meters; thence $N83^{\circ}52'03''W$, 675.171 meters; thence $S80^{\circ}26'06''W$, 81.797 meters; to a point at Latitude $35^{\circ}19'50.5658''$ North, Longitude $120^{\circ}55'47.8982''$ West said point being the POINT OF TERMINATION.

LENGTHENING OR SHORTENING the sidelines of said one foot wide strip to meet at angle points and to terminate at the State of California Offshore Boundary and the Ordinary High Water Mark of the Pacific Ocean.

EXCEPTING THEREFROM any portion of said one foot (0.3048 meter) wide strip of tide and submerged lands lying landward and easterly 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. Positional information for Land Description is based on "AAG-Seg5_RPL_KP4111-SLO_Special issue_02-Sep-09" provided by Alcatel- Lucent.

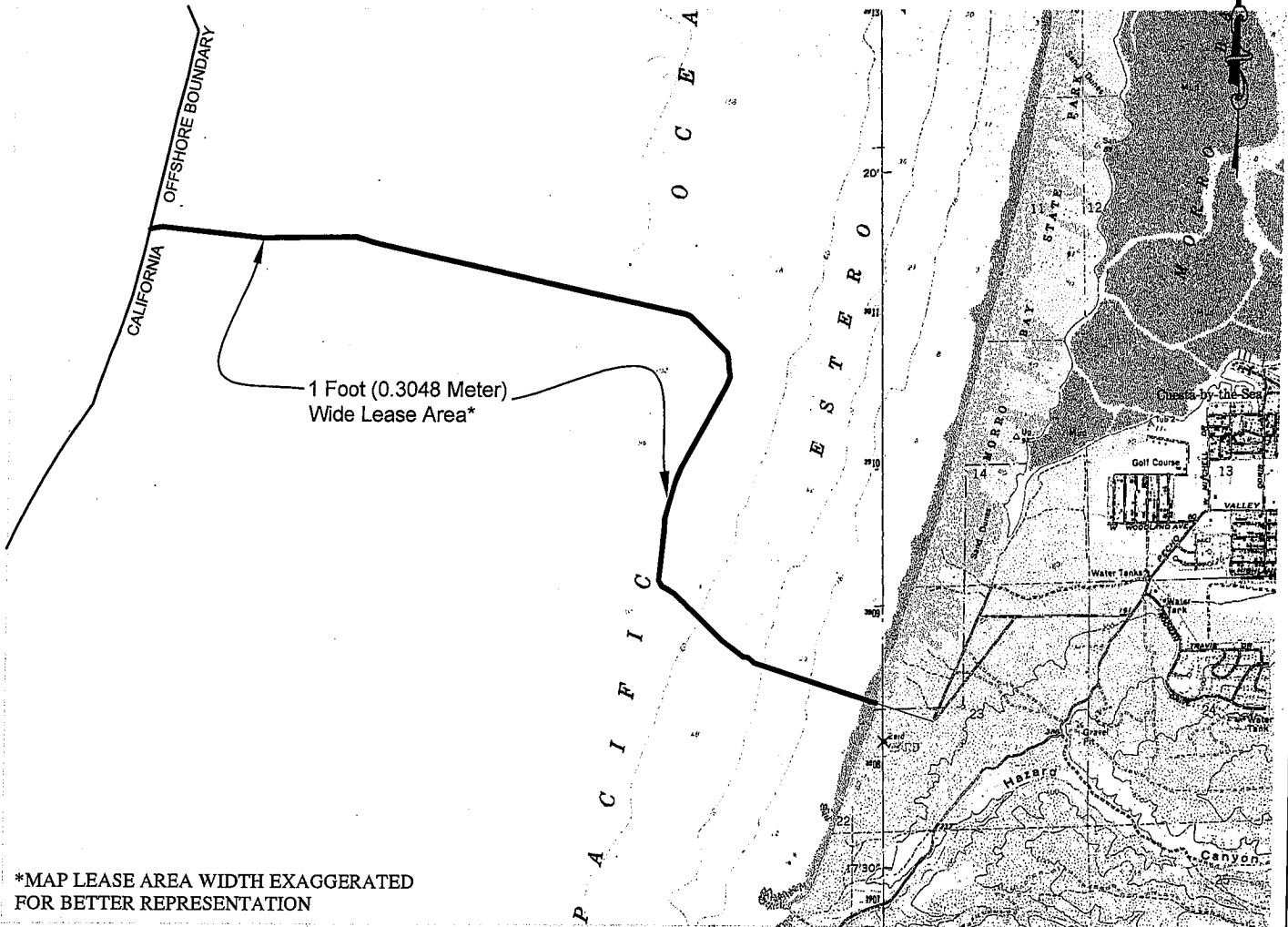
END OF DESCRIPTION

Prepared November 1, 2018 by the
California State Lands Commission Boundary Unit.



NO SCALE

SITE

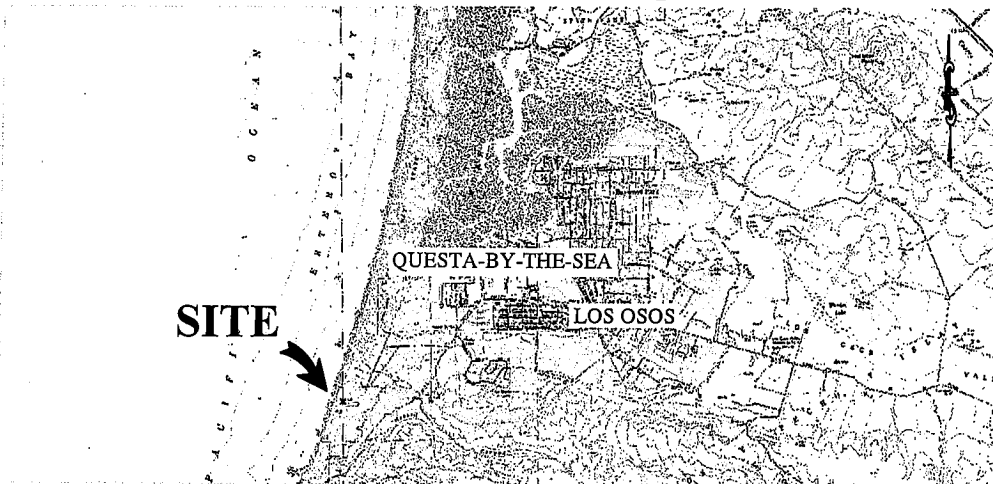


*MAP LEASE AREA WIDTH EXAGGERATED FOR BETTER REPRESENTATION

AT&T ASIA AMERICA GATEWAY FIBER OPTIC CABLE PROJECT

NO SCALE

LOCATION



SITE

MAP SOURCE: USGS QUAD

Exhibit B

PRC 8144.1

AT&T CORP.

APN 074-021-040

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.