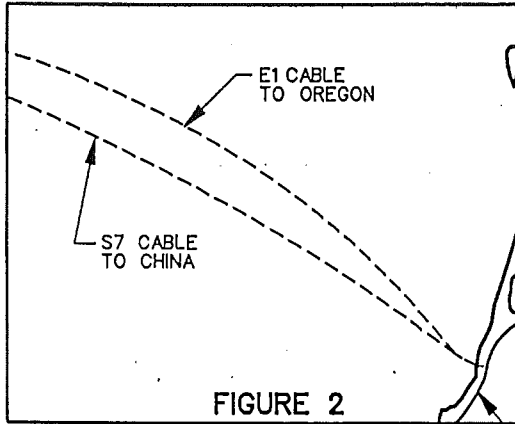


SAN LUIS OBISPO COUNTY, CALIFORNIA



MORRO BAY

LOS OSOS AND BAYWOOD PARK

1

LOS OSOS VALLEY RD.

101

PECHO VALLEY RD.

AT&T CABLE STATION

SAN LUIS OBISPO

PACIFIC OCEAN SHORE LINE

MONTANA DE ORO STATE PARK

101

PACIFIC OCEAN

PISMO BEACH

Exhibit 1
E-98-029

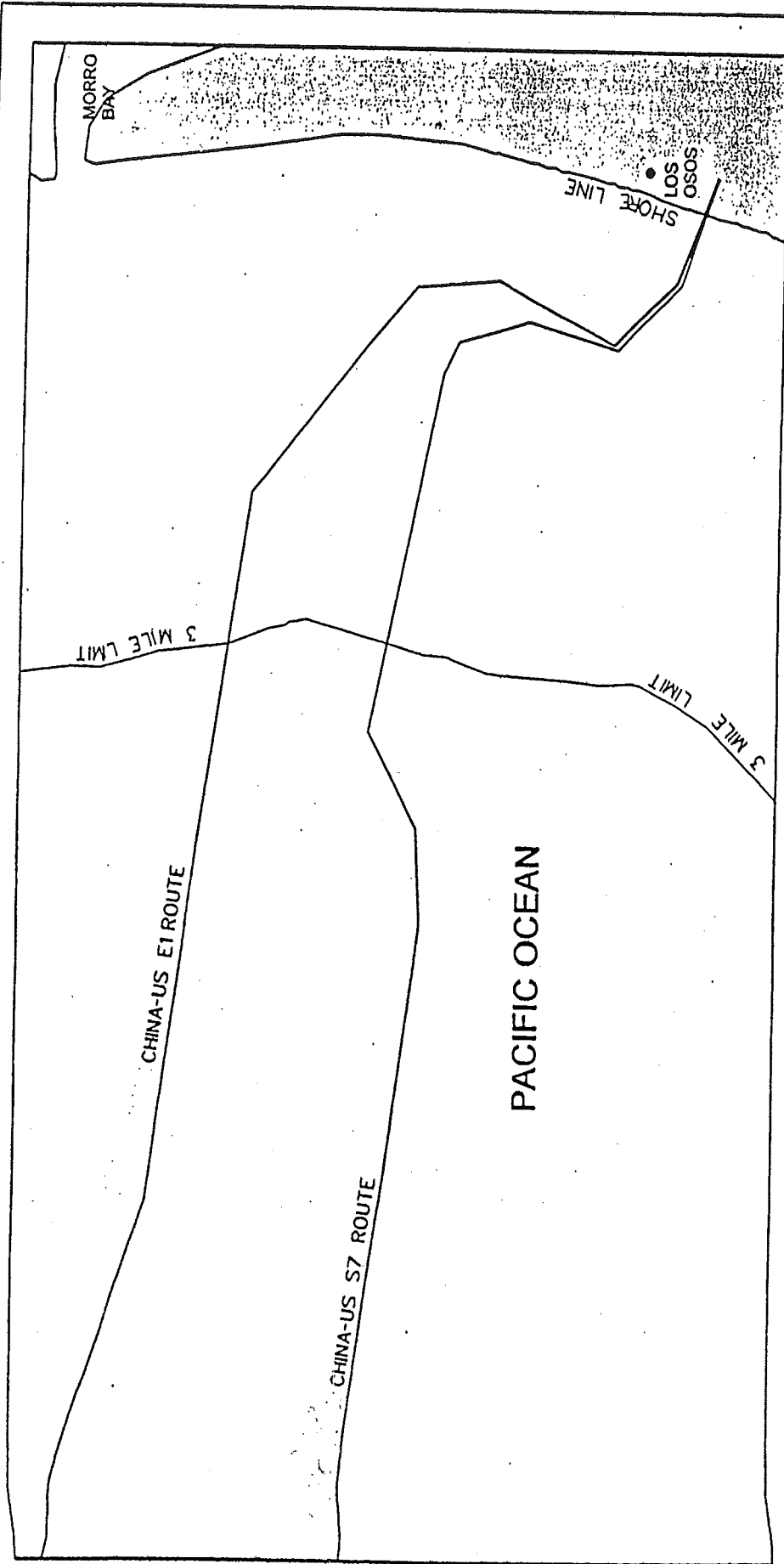
BHC
BRUNGARDT HONOMICHL & COMPANY, P.A.
CONSULTING ENGINEERS

CHINA-US CABLE NETWORK
SAN LUIS OBISPO LANDINGS
VICINITY MAP



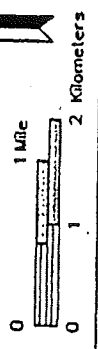
DATE:	3/3/99
SCALE:	1 : 200,000
DWG. NO.	FIGURE 1

I:\800\MAPS\CHRISPIPES.DGN



AT&T CHINA-US CABLE NETWORK PROPOSED ROUTES

Exhibit 2
E-98-029



RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

County: San Luis Obispo

LEASE PRC 8154.1

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 4
Section 3	Description of Lease Premises
Section 4	General Provisions

SECTION 1

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to **AT&T Corp.**, hereinafter referred to as Lessee, those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

MAILING ADDRESS: AT&T Corp.
Attn: Robert Wargo
One AT&T Way, Room 3D 151F
Bedminster, N.J. 07921

LEASE TYPE: General Lease – Non Exclusive Right of Way Use

LAND TYPE: Sovereign

LOCATION: Offshore of the city of Morro Bay, San Luis Obispo County

LAND USE OR PURPOSE: Continued use and maintenance of one 3.75-inch steel conduit and one fiber optic cable. The fiber optic cable will carry diverse digital communications traffic including voice, data and video.

TERM: 15 years; beginning April 20, 2010; ending April 19, 2025, unless sooner terminated as provided under this Lease.

CONSIDERATION: \$118,814 per year; subject to modification by Lessor as specified in Paragraph 2(b) of Section 4 - General Provisions.

AUTHORIZED IMPROVEMENTS:

X **EXISTING:** One 3.75-inch diameter steel conduit and one fiber optic cable.

LIABILITY INSURANCE: Not less than \$1,000,000 combined single limit coverage

SURETY BOND OR OTHER SECURITY: \$500,000

SECTION 2 SPECIAL PROVISIONS

BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED OR SUPPLEMENTED AS FOLLOWS:

1. Lessee has entered into this Lease as a principal, and not in the capacity of agent for the consortium or any third party. Furthermore, it is understood and agreed that no person or entity other than Lessee, and those holding an interest in the premises with the formal approval of Lessor in accordance with Section 4, Paragraph 10 (“Assignment, encumbrancing and Subletting”), shall acquire any interest in the Lease Premises or enforceable rights under this Lease.
2. Lessee is authorized to maintain only those improvements listed in Section 1. In accordance with the provisions of Paragraph 4(d) of Section 4, Lessee shall secure the written approval of Lessor prior to any additions to, alteration or modification of the improvements, including without limitation, the fiber optic cable authorized hereunder.
3. The consideration provided in Section 1 is based upon the use and improvements expressly authorized in this Lease. Any addition to, alteration, or modification of the authorized use or

improvements shall be subject to an immediate rental re-evaluation by Lessor. Lessee agrees that in accordance with the provisions of Paragraph 4(d) of Section 4, Lessee shall secure the written approval of Lessor prior to any additions to, alteration or modification of the improvements.

4. Lessor may modify the method, amount or rate of consideration effective on the second anniversary of the beginning date of this lease. Irrespective of whether Lessor exercises the right to modify lease consideration on the second anniversary, it may do so on the fifth anniversary, and subsequently thereafter as provided in Paragraph 2(b) of Section 4 ("Consideration").
5. Lessee shall exercise its rights under this Lease so as to avoid, to the fullest extent reasonably possible, interference with the State's use of the Lease Premises or with the public's right to use the Lease Premises for Public Trust purpose, including without limitation, waterborne commerce, navigation, fishing, water-related recreation, habitat preservation, and open space.
6. In addition to the rights reserved to Lessor under Paragraph 5 of Section 4 ("Reservations, Encumbrances and Rights-of-way"), Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises to third parties for facilities or improvements that may cross over or under Lessee's authorized improvements. Lessee agrees that such crossing shall not constitute or be deemed to be an inconsistent or incompatible use, nor a material interference with Lessee's improvements. Lessee shall cooperate fully to facilitate the installation, operation, maintenance and abandonment of such third-party facilities. From and after the installation of Lessee's facilities, any agreement entered into by Lessor authorizing third-party use of the Lease Premises for installation of facilities that will cross Lessee's cable(s) shall provide: (i) that the rights granted thereunder will be exercised so as to minimize, to the fullest extent reasonably possible, interference with Lessee's use of the Lease Premises or damage to Lessee's cables; (ii) that the third party give notice to Lessee prior to the commencement of construction of the cable crossing; and (iii) that the third party give Lessee a reasonable opportunity to negotiate and enter into a cable crossing agreement on such terms and conditions as may address and accommodate the respective rights and uses of each party. The failure of Lessee and any such third party to agree on the terms and conditions of a cable crossing agreement shall not prevent or unreasonably delay the third party from proceeding with the construction of such cable crossing.
7. Notwithstanding anything contained in Section 4, Paragraphs 4(g) ("Enjoyment") and 5(a)(4) ("Reservations") to the contrary, should Lessor lease, convey, or encumber the Lease Premises, in whole or in part, to a third party, and should the proposed installation of any improvements by such third party require the relocation of Lessee's authorized improvements, or any portion thereof, Lessor reserves the right to require Lessee to relocate its improvements, provided however, the relocation shall be at no cost to Lessee.
8. Lessee acknowledges and agrees:
 - a. The site may be subject to hazards from natural geophysical phenomena including, but not limited to waves, storm waves, tsunamis, earthquakes, flooding, and erosion.
 - b. To assume the risks to the Lessee and to the property that is the subject of any Coastal Development Permit (CDP) issued for development on the leased property, of injury and damage from such hazards in connection with the permitted development and use.
 - c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury or damage from such hazards.

- d. To indemnify, hold harmless and, at the option of Lessor, defend the State of California, agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, injuries or costs of any kind and from any cause (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage or claim due to site hazards or connected in any way with respect to the approval of any CDP involving this property or issuance of this Lease, any new lease, renewal, amendment, or assignment by Lessor.
9. All repairs to the improvements within the Lease Premises shall require prior review and approval by Lessor and such approval shall not be unreasonably withheld or delayed. In the event of an emergency repair requiring immediate action, telephone contact may be made through the Lessor's 24-hour emergency response number at (562) 590-5201.
10. Lessee will continue to comply with the "Agreement Between Cable Companies and Fishermen," dated January 30, 2002, including, but not limited to, all requirements therein regarding maintenance of a 24-hour toll-free contact number, fishing gear replacement, indemnity protections, notice provisions, and conflict resolution procedures and expenses.
11. Cable burial verification inspection shall occur five years beginning from the date of the 2010 lease renewal, and after events that affect the cables. "Event" for the purposes of this measure is defined as: an incident or activity (such as a gear snag), the circumstances of which indicated the likelihood that a cable has become unburied; or act of God, such as an earthquake in the vicinity of the cables measuring 5.0 or greater on the Richter scale that could cause deformation of the sea floor or underwater landslides, or an unusually severe storm or tidal wave that could cause excessive ocean floor scouring.

The survey shall be conducted by an ROV equipped with video and still cameras and by a third party agreed to by the permitting agencies. A report providing verification of cable burial, including depth shall be submitted to the State Lands Commission and the CCC. The cable owner must submit, for approval to the State Lands Commission staff, a plan for reburying any exposed segments or segments likely to be exposed as soon as possible, but not to exceed 30 days, after survey completion. This plan shall include a proposed schedule for completion of the necessary work, including gear retrieval.

Accordingly, the next burial inspection survey following the 2010 survey, other than a survey required under the Lease following an event that affects the burial status of the cable, must be completed and the report submitted to Lessor for review by November 1, 2015. The following periodic burial survey must be completed by Lessee and the report submitted to Lessor for review by November 1, 2020. Prior to the expiration of this Lease, Lessee shall complete the last burial survey no later than November 1, 2024. Lessee shall furnish the survey results concurrently to the Lessor and to the CCC.

12. If cable repair is required, the hydrographic survey charts and as-built drawings shall be consulted to locate an area of soft bottom for grapnel retrieval (this is a standard procedure). If the charts indicate the repair location is near enough to one of the rock outcrops that contact with the grapnel is possible, the retrieval point shall be relocated - either along the affected cable or by approaching from the opposite side - to avoid contact with the rock outcrop. Cable loop shall be laid and reburied in soft substrate where feasible.

13. The cable locations are required to be recorded on navigational charts for public information. Notice to Mariners shall be issued prior to repair to alert marine users of upcoming vessel activity.
14. The cable operator shall notify fishermen in the project area of repair activities through local fishing organizations and the JCFLC prior to the cable operator entering the area. The cable operator shall identify the specific location of the repair, indicate whether there is a possibility of exposed cable, and provide estimated schedules for repair activities.
15. The United States Coast Guard (USCG) will be notified of cable repair operations prior to the cable operator entering the area. The cable repair vessel will have a shipboard critical operations and curtailment plan on board to delineate and maintain safe operating conditions.
16. The cable repair vessel will have a shipboard Oil Spill Prevention and Response Plan and all necessary equipment (sorber boom, sorber pads, etc.) to implement said plan on board. Before repair work is conducted, the plan will be submitted to the Office of Oil Spill Prevention and Response (OSPR) for review and approval and verification of that approval will be provided to the CSLC. In addition, the vessel shall carry a small powered boat for rapid deployment to contain and clean up any spill or sheen on the water surface.
17. A biologist familiar with marine mammal behavior shall be present on board the repair or other support vessel during any repair activities to observe for marine mammals that approach the project area. The observer shall be authorized to call a halt to project activities that pose a risk of injury to marine mammals.
18. Prior to performing the required underwater survey in State waters to determine the degree of burial of the fiber optic cable, Lessee shall submit to the CSLC the name of the company performing the survey and verification, if required by the CSLC at the time of the underwater survey, that said company possesses a valid and current Geophysical Survey Permit issued by the CSLC. Should this condition not be met and/or the company performing the survey does not possess a valid Geophysical Survey Permit issued by the CSLC, results from said survey shall not be accepted by the CSLC and Lessee shall be found in default of the lease.
19. Lessee agrees to submit no later than two years prior to the expiration of this lease either: (a) an application and minimum expense deposit for a new lease for the continued use of the Lease Premises, or (b) a plan for the restoration of the Lease Premises to be completed prior to the expiration of the lease term, pursuant to Paragraph 12 of Section 4, General Provisions, of this Lease. Failure to submit the application and minimum expense deposit or the restoration plan shall be deemed a default of the Lease under Paragraph 11(b) of Section 4, General Provisions, of this Lease.
20. Lessee may elect to terminate this lease prior to the end of the lease term, thereby terminating its rights and obligations from the date of termination through the end of the lease term, provided that (a) Lessee notifies the CSLC in writing of the date on which this Lease will terminate, which date shall be no sooner than two years from the date of written notice, and (b) complies with all the conditions of Paragraph 19 of Section 2, Special Provisions of this Lease, except that the time by which to submit the restoration plan shall apply by reference to the Lessee's announced date of termination instead of the expiration of the lease term. If the Lessee complies with these

conditions, this Lease shall terminate on the announced date of termination. The Lessee may withdraw any written intention to terminate the Lease prior to the announced date of termination, provided that any such withdrawal shall be in writing, and further provided that Lessee shall reimburse the CSLC for all reasonable expenses incurred in processing the announced date and subsequently withdrawn notice of termination.

In the event of any conflict between the provisions of Section 2 and Section 4 of this Lease, the provisions of Section 2 shall prevail.

SECTION 3
LAND DESCRIPTION

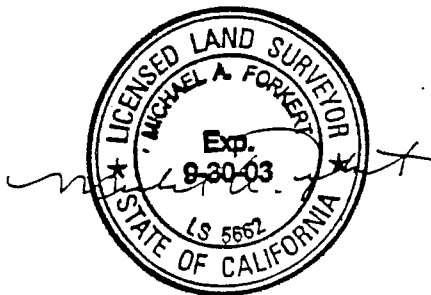
A ten foot (3.048 meter) wide strip of submerged lands in the bed of the Pacific Ocean lying between the Ordinary High Water Mark and the State of California Offshore Boundary in San Luis Obispo County, State of California, the centerline of said strip being more particularly described as follows:

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 $58^{\circ} 1' 15''$ West, 1,077.97 meters to a point in submerged lands on the westerly boundary of Parcel A, PRC #7603.9 approved by the California State Lands Commission on August 3, 1994 and filed in said commission record, said point being the POINT OF BEGINNING; thence North $46^{\circ} 49' 45''$ West 948.19 meters; thence North $16^{\circ} 13' 54''$ East 1,044.64 meters; thence North $15^{\circ} 6' 53''$ West 322.14 meters; thence North $15^{\circ} 57' 37''$ West 527.33 meters; thence North $64^{\circ} 4' 18''$ West 402.52 meters; thence North $78^{\circ} 38' 29''$ West 3,045.22 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 terminate at said State of California Offshore Boundary and at said Parcel A, PRC #7603.9 and EXCEPTING THEREFROM any portion of said strip lying seaward of said State of California Offshore Boundary or within said Parcel A, PRC #7603.9.

Geographic coordinate(s) given are NAD 83; bearings and distances are grid, UTM, Zone 10N based on "China-US, Segment S7B2, As Laid Route Position List, San Luis Obispo, CA to Final Splice, Issue 2, 6/29/01" provided by Tyco Submarine Systems, Ltd.

END OF DESCRIPTION



SECTION 4

GENERAL PROVISIONS

1. GENERAL

These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

2. CONSIDERATION

(a) Categories

(1) Rental

Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay, or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

(2) Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health, or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

(b) Modification

Lessor may modify the method, amount, or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

(c) Penalty and Interest

Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

3. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

4. LAND USE

(a) General

Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements

and within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

(c) Repairs and Maintenance

Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

(d) Additions, Alterations, and Removal

(1) Additions - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

(e) Conservation

Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

(f) Toxics

Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances, or materials.

(g) Enjoyment

Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use

and enjoyment of the Lease Premises as provided under this Lease.

(h) **Discrimination**

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) **Residential Use**

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins, or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. **RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY**

(a) **Reservations**

- (1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.
- (3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) **Encumbrances**

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances, and claims and is made without warranty by Lessor of title, condition, or fitness of the land for the stated or intended purpose.

6. **RULES, REGULATIONS, AND TAXES**

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtains and maintains all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. **INDEMNITY**

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.

8. **INSURANCE**

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.

(b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the

policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

9. SURETY BOND

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants, and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give prior written notice to Lessor;

(2) Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party, or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee, or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrance or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of

or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

11. DEFAULT AND REMEDIES

(a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's Failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or

- (7) Lessee's failure to comply with applicable provisions of federal, state or local laws or ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Remedies

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice, Lessee shall immediately surrender possession of the Lease Premises to Lessor;
- (3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

(c) All plans for and subsequent removal and restoration shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

(e) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

13. QUITCLAIM

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

14. HOLDING-OVER

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty-five percent (25%).

15. ADDITIONAL PROVISIONS

(a) Waiver

(1) No term, covenant, or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived, by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) Notice

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes

This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties.

(f) Successors

The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) Joint and Several Obligation

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) Captions

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

(i) Severability

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

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STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE P.R.C. NO. 8154.1

This lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent, or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

**LESSEE
AT&T CORP.**

By: 

Title: VP

Date: 12/21/10

**LESSOR
STATE OF CALIFORNIA
STATE LANDS COMMISSION**

By: 


Title: Chief, Division of
Land Management

Date: FEB 02 2011

This Lease was authorized by the California State Lands Commission on

October 29, 2010
(Month Day Year)

ACKNOWLEDGEMENT

 12/21/2010 for Peter S. Cornell.

BHARATI OZA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 31, 2015

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

County: San Luis Obispo

LEASE PRC 8278.1

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 4
Section 3	Description of Lease Premises
Section 4	General Provisions

SECTION 1

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to **AT&T Corp.**, hereinafter referred to as Lessee, those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

MAILING ADDRESS: AT&T Corp.
Attn: Robert Wargo
One AT&T Way, Room 3D 151F
Bedminster, N.J. 07921

LEASE TYPE: General Lease – Non Exclusive Right of Way Use

LAND TYPE: Sovereign

LOCATION: Offshore of the city of Morro Bay, San Luis Obispo County

LAND USE OR PURPOSE: Continued use and maintenance of one six-inch diameter steel conduit and one fiber optic cable identified as a portion of the China-US E1 Fiber Optic Cable. The fiber optic cable will carry diverse digital communications traffic including but not limited to voice, data and video.

TERM: 15 years; beginning April 20, 2011; ending April 19, 2026, unless sooner terminated as provided under this Lease.

CONSIDERATION: - \$ 150,843 per year; subject to modification by Lessor as specified in Paragraph 2(b) of Section 4 - General Provisions.

AUTHORIZED IMPROVEMENTS:

X **EXISTING:** One six-inch diameter steel conduit and one fiber optic cable.

LIABILITY INSURANCE: Not less than \$1,000,000 combined single limit coverage

SURETY BOND OR OTHER SECURITY: \$500,000

**SECTION 2
SPECIAL PROVISIONS**

**BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED,
REVISED OR SUPPLEMENTED AS FOLLOWS:**

1. Lessee has entered into this Lease as a principal, and not in the capacity of agent for the consortium or any third party. Furthermore, it is understood and agreed that no person or entity other than Lessee, and those holding an interest in the premises with the formal approval of Lessor in accordance with Section 4, Paragraph 10 (“Assignment, encumbrancing and Subletting”), shall acquire any interest in the Lease Premises or enforceable rights under this Lease.
2. Lessee is authorized to maintain only those improvements listed in Section 1. In accordance with the provisions of Paragraph 4(d) of Section 4, Lessee shall secure the written approval of Lessor prior to any additions to, alteration or modification of the improvements, including without limitation, the fiber optic cable authorized hereunder.

3. The consideration provided in Section 1 is based upon the use and improvements expressly authorized in this Lease. Any addition to, alteration, or modification of the authorized use or improvements shall be subject to an immediate rental re-evaluation by Lessor. Lessee agrees that in accordance with the provisions of Paragraph 4(d) of Section 4, Lessee shall secure the written approval of Lessor prior to any additions to, alteration or modification of the improvements.
4. Lessor may modify the method, amount or rate of consideration effective on the second anniversary of the beginning date of this lease. Irrespective of whether Lessor exercises the right to modify lease consideration on the second anniversary, it may do so on the fifth anniversary, and subsequently thereafter as provided in Paragraph 2(b) of Section 4 ("Consideration").
5. Lessee shall exercise its rights under this Lease so as to avoid, to the fullest extent reasonably possible, interference with the State's use of the Lease Premises or with the public's right to use the Lease Premises for Public Trust purpose, including without limitation, waterborne commerce, navigation, fishing, water-related recreation, habitat preservation, and open space.
6. In addition to the rights reserved to Lessor under Paragraph 5 of Section 4 ("Reservations, Encumbrances and Rights-of-way"), Lessor expressly reserves the right to lease convey, or encumber the Lease Premises to third parties for facilities or improvements that may cross over or under Lessee's authorized improvements. Lessee agrees that such crossing shall not constitute or be deemed to be an inconsistent or incompatible use, nor a material interference with Lessee's improvements. Lessee shall cooperate fully to facilitate the installation, operation, maintenance and abandonment of such third-party facilities. From and after the installation of Lessee's facilities, any agreement entered into by Lessor authorizing third-party use of the Lease Premises for installation of facilities that will cross Lessee's cable(s) shall provide: (i) that the rights granted thereunder will be exercised so as to minimize, to the fullest extent reasonably possible, interference with Lessee's use of the Lease Premises or damage to Lessee's cables; (ii) that the third party give notice to Lessee prior to the commencement of construction of the cable crossing; and (iii) that the third party give Lessee a reasonable opportunity to negotiate and enter into a cable crossing agreement on such terms and conditions as may address and accommodate the respective rights and uses of each party. The failure of Lessee and any such third party to agree on the terms and conditions of a cable crossing agreement shall not prevent or unreasonably delay the third party from proceeding with the construction of such cable crossing.
7. Notwithstanding anything contained in Section 4, Paragraphs 4(g) ("Enjoyment") and 5(a)(4) ("Reservations") to the contrary, should Lessor lease, convey, or encumber the Lease Premises, in whole or in part, to a third party, and should the proposed installation of any improvements by such third party require the relocation of Lessee's authorized improvements, or any portion thereof, Lessor reserves the right to require Lessee to relocate its improvements, provided however, the relocation shall be at no cost to Lessee.
8. Lessee acknowledges and agrees:
 - a. The site may be subject to hazards from natural geophysical phenomena including, but not limited to waves, storm waves, tsunamis, earthquakes, flooding, and erosion.
 - b. To assume the risks to the Lessee and to the property that is the subject of any Coastal Development Permit (CDP) issued for development on the leased property, of injury and damage from such hazards in connection with the permitted development and use.

- c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury or damage from such hazards.
 - d. To indemnify, hold harmless and, at the option of Lessor, defend the State of California, agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, injuries or costs of any kind and from any cause (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage or claim due to site hazards or connected in any way with respect to the approval of any CDP involving this property or issuance of this Lease, any new lease, renewal, amendment, or assignment by Lessor.
9. All repairs to the improvements within the Lease Premises shall require prior review and approval by Lessor and such approval shall not be unreasonably withheld or delayed. In the event of an emergency repair requiring immediate action, telephone contact may be made through the Lessor's 24-hour emergency response number at (562) 590-5201.
 10. Lessee will continue to comply with the "Agreement Between Cable Companies and Fishermen," dated January 30, 2002, including, but not limited to, all requirements therein regarding maintenance of a 24-hour toll-free contact number, fishing gear replacement, indemnity protections, notice provisions, and conflict resolution procedures and expenses.
 11. Cable burial verification inspection shall occur five years beginning from the date of the 2010 lease renewal, and after events that affect the cables. "Event" for the purposes of this measure is defined as: an incident or activity (such as a gear snag), the circumstances of which indicated the likelihood that a cable has become unburied; or act of God, such as an earthquake in the vicinity of the cables measuring 5.0 or greater on the Richter scale that could cause deformation of the sea floor or underwater landslides, or an unusually severe storm or tidal wave that could cause excessive ocean floor scouring.

The survey shall be conducted by an ROV equipped with video and still cameras and by a third party agreed to by the permitting agencies. A report providing verification of cable burial, including depth shall be submitted to the State Lands Commission and the CCC. The cable owner must submit, for approval to the State Lands Commission staff, a plan for reburying any exposed segments or segments likely to be exposed as soon as possible, but not to exceed 30 days, after survey completion. This plan shall include a proposed schedule for completion of the necessary work, including gear retrieval.

Accordingly, the next burial inspection survey following the 2010 survey, other than a survey required under the Lease following an event that affects the burial status of the cable, must be completed and the report submitted to Lessor for review by November 1, 2015. The following periodic burial survey must be completed by Lessee and the report submitted to Lessor for review by November 1, 2020. Prior to the expiration of this Lease, Lessee shall complete the last burial survey no later than November 1, 2024. Lessee shall furnish the survey results concurrently to the Lessor and to the CCC.

12. If cable repair is required, the hydrographic survey charts and as-built drawings shall be consulted to locate an area of soft bottom for grapnel retrieval (this is a standard procedure). If

the charts indicate the repair location is near enough to one of the rock outcrops that contact with the grapnel is possible, the retrieval point shall be relocated - either along the affected cable or by approaching from the opposite side - to avoid contact with the rock outcrop. Cable loop shall be laid and reburied in soft substrate where feasible.

13. The cable locations are required to be recorded on navigational charts for public information. Notice to Mariners shall be issued prior to repair to alert marine users of upcoming vessel activity.
14. The cable operator shall notify fishermen in the project area of repair activities through local fishing organizations and the JCFLC prior to the cable operator entering the area. The cable operator shall identify the specific location of the repair, indicate whether there is a possibility of exposed cable, and provide estimated schedules for repair activities.
15. The United States Coast Guard (USCG) will be notified of cable repair operations prior to the cable operator entering the area. The cable repair vessel will have a shipboard critical operations and curtailment plan on board to delineate and maintain safe operating conditions.
16. The cable repair vessel will have a shipboard Oil Spill Prevention and Response Plan and all necessary equipment (sorbent boom, sorbent pads, etc.) to implement said plan on board. Before repair work is conducted, the plan will be submitted to the Office of Oil Spill Prevention and Response (OSPR) for review and approval and verification of that approval will be provided to the CSLC. In addition, the vessel shall carry a small powered boat for rapid deployment to contain and clean up any spill or sheen on the water surface.
17. A biologist familiar with marine mammal behavior shall be present on board the repair or other support vessel during any repair activities to observe for marine mammals that approach the project area. The observer shall be authorized to call a halt to project activities that pose a risk of injury to marine mammals.
18. Prior to performing the required underwater survey in State waters to determine the degree of burial of the fiber optic cable, Lessee shall submit to the CSLC the name of the company performing the survey and verification, if required by the CSLC at the time of the underwater survey, that said company possesses a valid and current Geophysical Survey Permit issued by the CSLC. Should this condition not be met and/or the company performing the survey does not possess a valid Geophysical Survey Permit issued by the CSLC, results from said survey shall not be accepted by the CSLC and Lessee shall be found in default of the lease.
19. Lessee agrees to submit no later than two years prior to the expiration of this lease either: (a) an application and minimum expense deposit for a new lease for the continued use of the Lease Premises, or (b) a plan for the restoration of the Lease Premises to be completed prior to the expiration of the lease term, pursuant to Paragraph 12 of Section 4, General Provisions, of this Lease. Failure to submit the application and minimum expense deposit or the restoration plan shall be deemed a default of the Lease under Paragraph 11(b) of Section 4, General Provisions, of this Lease.
20. Lessee may elect to terminate this lease prior to the end of the lease term, thereby terminating its rights and obligations from the date of termination through the end of the lease term, provided

that (a) Lessee notifies the CSLC in writing of the date on which this Lease will terminate, which date shall be no sooner than two years from the date of written notice, and (b) complies with all the conditions of Paragraph 19 of Section 2, Special Provisions of this Lease, except that the time by which to submit the restoration plan shall apply by reference to the Lessee's announced date of termination instead of the expiration of the lease term. If the Lessee complies with these conditions, this Lease shall terminate on the announced date of termination. The Lessee may withdraw any written intention to terminate the Lease prior to the announced date of termination, provided that any such withdrawal shall be in writing, and further provided that Lessee shall reimburse the CSLC for all reasonable expenses incurred in processing the announced date and subsequently withdrawn notice of termination.

In the event of any conflict between the provisions of Section 2 and Section 4 of this Lease, the provisions of Section 2 shall prevail.

SECTION 3

PRC 8278

LAND DESCRIPTION

A ten foot (3.048 meter) wide strip of tide and submerged land in the bed of the Pacific Ocean lying between the Ordinary High Water Mark and the State of California Offshore Boundary, 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°16'39" West 353.68 meters, said manhole cover having a Latitude of 35°18'01.2659" North and a Longitude of 120°52'20.3895" West, North American Datum 1983; thence along the following thirteen (13) courses:

1. North 66° 54' 20" West 1215.785 meters;
2. North 50° 19' 42" West 282.533 meters;
3. North 46° 41' 44" West 549.660 meters;
4. North 08° 55' 41" West 335.060 meters;
5. North 27° 16' 21" East 181.140 meters;
6. North 26° 55' 40" East 141.320 meters;
7. North 27° 11' 19" East 903.870 meters;
8. North 27° 05' 01" East 98.840 meters;
9. North 01° 11' 17" West 434.090 meters;
10. North 15° 30' 42" West 744.100 meters;
11. North 52° 29' 49" West 2823.570 meters;
12. North 82° 42' 05" West 1023.290 meters;
13. North 82° 38' 19" West 747.709 meters to a point on said California Offshore

Boundary, said point having a Latitude of 35°21'07.92771" North and a Longitude of 120°55'48.90460" West, North American Datum 1983, said point also being the POINT OF TERMINATION of said centerline.

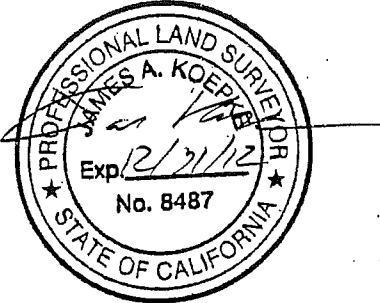
The sidelines of said strip are to be lengthened or shortened as to terminate at said Ordinary High Water Mark, said California Offshore Boundary, and at angle point intersections.

EXCEPTING THEREFROM any portion of said ten foot (3.048 meter) wide strip of tide and submerged lands lying landward and easterly of 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 February 28, 2011 by the California State Lands Commission Boundary Unit.



SECTION 4

GENERAL PROVISIONS

1. GENERAL

These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

2. CONSIDERATION

(a) Categories

(1) Rental

Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay, or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

(2) Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health, or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

(b) Modification

Lessor may modify the method, amount, or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

(c) Penalty and Interest

Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

3. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

4. LAND USE

(a) General

Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements

and within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

(c) Repairs and Maintenance

Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

(d) Additions, Alterations, and Removal

(1) Additions - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

(e) Conservation

Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

(f) Toxics

Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances, or materials as defined under federal, State, or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, State, or local law, regulation or ordinance dealing with such wastes, substances, or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances, or materials.

(g) Enjoyment

Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use

and enjoyment of the Lease Premises as provided under this Lease.

(h) Discrimination

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) Residential Use

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins, or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY

(a) Reservations

- (1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purposes associated with this Lease or for carrying out any function required by law, or the rules, regulations, or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.
- (3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) Encumbrances

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances, and claims and is made without warranty by Lessor of title condition, or fitness of the land for the stated or intended purpose.

6. RULES, REGULATIONS, AND TAXES

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtains and maintains all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. INDEMNITY

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless, and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.

8. INSURANCE

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition, or maintenance of the Lease Premises and all improvements.

(b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the

policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

9. SURETY BOND

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants, and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give prior written notice to Lessor;

(2) Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party, or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee, or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrance or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of

or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

11. DEFAULT AND REMEDIES

(a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's Failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or

- (7) Lessee's failure to comply with applicable provisions of federal, State or local laws or ordinances relating to issues of Health and Safety or whose purpose is to conserve resources or protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant, or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Remedies

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice, Lessee shall immediately surrender possession of the Lease Premises to Lessor;
- (3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

(c) All plans for and subsequent removal and restoration shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

(e) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, State or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

13. **QUITCLAIM**

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

14. **HOLDING-OVER**

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty-five percent (25%).

15. **ADDITIONAL PROVISIONS**

(a) **Waiver**

(1) No term, covenant, or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived, by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

(b) **Time**

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) **Notice**

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) **Consent**

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) **Changes**

This Lease may be terminated and its term, covenants, and conditions amended, revised, or supplemented only by mutual written agreement of the parties.

(f) **Successors**

The terms, covenants, and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) **Joint and Several Obligation**

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) **Captions**

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

(i) **Severability**

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

STATE OF CALIFORNIA – STATE LANDS COMMISSION

LEASE P.R.C. NO. 8278.1

This lease shall become effective only when approved by and executed on behalf of the Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent, or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE
AT&T CORP.

LESSOR
STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

This Lease was authorized by the
California State Lands Commission on

(Month Day Year)

ACKNOWLEDGEMENT

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



Page 1 of 5
June 9, 2000
Permit No. E-98-029

COASTAL DEVELOPMENT PERMIT

On May 11, 2000, by a vote of 10-0, the California Coastal Commission granted to AT&T Corporation. Coastal Development Permit No. E-98-029, subject to the attached standard and special conditions, for development consisting of:

Installation, operation, and maintenance of the S7 fiber optic cable in State waters.

The development is located in the coastal zone offshore of Montana de Oro State Park, west-southwest of the City of Los Osos, San Luis Obispo County.

Issued on behalf of the Coastal Commission on June 9, 2000.

PETER DOUGLAS
Executive Director

A handwritten signature in cursive script, appearing to read "Alison Dettmer".

By: ALISON J. DETTMER
Manager
Energy, Ocean Resources and Water Quality

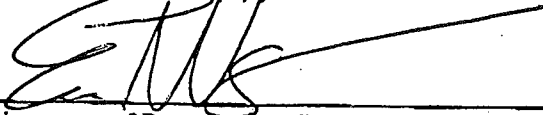
Acknowledgment:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4, which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance...of any permit..." applies to the issuance of this permit.

IMPORTANT: THE PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. (14 Cal. Admin. Code Section 13158(a).)

9 June, 2000
Date



Signature of Permittee or Representative

Special Conditions

1. **Cable Burial Depth.** The S7 cable shall be buried to a depth of 1.0 meter except where precluded by seafloor substrates. Where a 1.0 meter burial depth cannot be achieved, the applicant shall bury the S7 cable to the maximum depth feasible.
2. **Cable Installation Documentation.** Within 30 days of cable installation, the applicant shall submit to the Executive Director of the Coastal Commission (hereinafter "Executive Director") an as-built plan, including the depth of burial, of the S7 cable. The S7 cable location shall be obtained by an acoustic navigation system linked to a surface differential global positioning system. The transponder for the acoustical navigational system shall be mounted on the equipment used for cable burial.
3. **Cable Surveying.** Every 18 to 24 months for the life of project, the applicant shall survey the S7 cable route from the mean high tide line to the seaward limit of the territorial waters of the State of California to verify that the cable has remained buried consistent with the as-built cable burial plan required by Special Condition 5. The survey shall be conducted with a remotely-operated vehicle ("ROV") equipped with video and still cameras and by a third party approved by the Executive Director. Within 30 days of survey completion, the applicant shall submit to the Executive Director a report describing the results of the survey. If the survey shows that a segment(s) of the S7 cable is no longer buried consistent with the as-built cable burial plan required by Special Condition 5, the applicant shall, within 30 days of survey completion, submit to the Executive Director for approval a plan to re-bury those cable segments.
4. **Cable Removal.** Within 90 days of taking either the S7 cable out of service or after the expiration or sooner termination of the applicant's State Lands Commission lease(s) or permit(s), the applicant shall apply for an amendment to this permit to remove the cable from the seafloor. Cable removal shall occur from the mean high tide line to the seaward limit of the territorial waters of the State of California.
5. **Marine Discharge.** There shall be no marine discharge of sewage or bilge/ballast water from vessels either installing or repairing the S7 cable.
6. **Marine Mammals.** A trained marine mammal observer, to be approved by the Executive Director in consultation with the National Marine Fisheries Service, shall be on the cable lay or support vessel to monitor marine mammals that approach the project work area. In the event that, in the opinion of the observer, project operations have the potential to threaten the health or safety of marine mammals or have the potential to take, as defined by the Endangered Species Act, a marine mammal, the observer shall have the authority to terminate all project activities until the observer determines there is no longer a threat.
7. **Marine Mammal Report.** Within 30 days of completion of cable installation activities, the applicant shall submit to the Executive Director a copy of the marine mammal monitoring report required by condition 12 of the applicant's State Lands Commission lease(s).

8. **Ghost Nets.** In the event that trawlers snag and cut their trawl gear due to entanglement with the S7 cable, the applicant shall use all feasible measures to retrieve the trawl gear as soon possible but no later than six weeks after receiving notice of the incident. The applicant shall provide notice to the Executive Director within seven days of gear retrieval efforts.
9. **Hard Bottom Seafloor Survey.** Within 30 days of project completion, a video survey (displaying real-time position and water depth of the ROV) of the seafloor along the construction corridor shall be completed by a consultant approved by the Executive Director. Still-photographs of representative habitat shall be taken in any areas of high-relief rocky substrate traversed by the S7 cable. The survey shall quantify the extent of exposed rocky substrate, including type and relief, if any, impacted by offshore operations out to the seaward limit of the territorial waters of the State of California. Within 45 days of completing the survey, the applicant shall submit to the Executive Director a written report describing the results of the survey to derive net project impacts to rocky substrate. The survey report shall identify the location and quantify the extent of any disturbance to hard bottom caused by project operations.
10. **Hard Bottom Mitigation Fund.** The applicant shall compensate for all project-related impacts to hard bottom habitat through payment of a compensatory hard bottom mitigation fee to be used to construct a new artificial reef or augment an existing artificial reef in State waters within the Southern California Bight. The construction of a new artificial reef, or augmentation of an existing reef, shall be carried out pursuant to a Memorandum of Agreement by and between the California Coastal Commission, the California Department of Fish and Game and the United Anglers of Southern California (Exhibit 4).

The amount of the hard bottom mitigation fee shall be calculated by multiplying the total square footage of impacted hard bottom (as determined in the survey conducted under Special Condition 12) by a compensation rate of \$27.31 per square foot. The fee shall be paid to the United Anglers of Southern California within 30 calendar days of the results of the hard bottom survey required by Special Condition 12.

11. **Oil Spill.** Prior to issuance of this permit, the applicant shall submit for Executive Director approval a project-specific oil spill contingency plan that includes: (a) an estimate of a reasonable worst case spill from project operations pursuant to the nontank vessel contingency plan regulations found at 14 CCR Sections 825.03 - 827.02; (b) a list of all clean-up equipment that will be maintained on the primary work vessel (at a minimum, the equipment required in 14 CCR Sections 825.03-827.02); (c) the specific designation of the onsite person who will have responsibility for implementing the plan; and (d) for all project vessels, evidence of a contract with an oil spill response organization for on-water and shoreline protection capable of responding to a worst-case spill in the event that a spill exceeds the cleanup capability of the onsite work force.

STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
(415) 904-5400



Page 1 of 5
June 19, 2000
Permit No. E-98-029 (E1)

COASTAL DEVELOPMENT PERMIT

On June 13, 2000, by a vote of 8-2-1, the California Coastal Commission granted to AT&T Corporation Coastal Development Permit No. E-98-029, subject to the attached standard and special conditions, for development consisting of:

Installation, operation, and maintenance of the E1 fiber optic cable in State waters.

The development is located in the coastal zone offshore of Montana de Oro State Park, west-southwest of the City of Los Osos, San Luis Obispo County.

Issued on behalf of the Coastal Commission on June 19, 2000.

PETER DOUGLAS
Executive Director

Jaime C. Kooser
By: JAIME C. KOOSER, Ph.D.
Deputy Director
Energy, Ocean Resources and Water Quality

Acknowledgment:

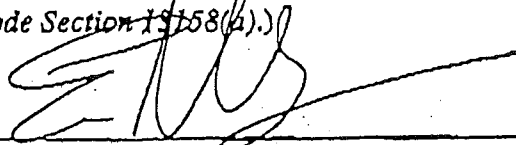
The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4, which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance...of any permit..." applies to the issuance of this permit.

IMPORTANT: THE PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. (14 Cal. Admin. Code Section 15158(a).)

June 19, 2000

Date



Signature of Permittee or Representative

Special Conditions

1. **Cable Burial Depth.** The E1 cable shall be buried to a depth of 1.0 meter except where precluded by seafloor substrates. Where a 1.0 meter burial depth cannot be achieved, the applicant shall bury the E1 cable to the maximum depth feasible.
2. **Cable Installation Documentation.** Within 30 days of cable installation, the applicant shall submit to the Executive Director of the Coastal Commission (hereinafter "Executive Director") an as-built plan, including the depth of burial, of the E1 cable. The E1 cable location shall be obtained by an acoustic navigation system linked to a surface differential global positioning system. The transponder for the acoustical navigational system shall be mounted on the equipment used for cable burial.
3. **Cable Surveying.** Every 18 to 24 months for the life of project, the applicant shall survey the E1 cable route from the mean high tide line to the seaward limit of the territorial waters of the State of California to verify that the cable has remained buried consistent with the as-built cable burial plan required by Special Condition 5. The survey shall be conducted with a remotely-operated vehicle ("ROV") equipped with video and still cameras and by a third party approved by the Executive Director. Within 30 days of survey completion, the applicant shall submit to the Executive Director a report describing the results of the survey. If the survey shows that a segment(s) of the E1 cable is no longer buried consistent with the as-built cable burial plan required by Special Condition 5, the applicant shall, within 30 days of survey completion, submit to the Executive Director for approval a plan to re-bury those cable segments.
4. **Cable Removal.** Within 90 days of taking either the E1 cable out of service or after the expiration or sooner termination of the applicant's State Lands Commission lease(s) or permit(s), the applicant shall apply for an amendment to this permit to remove the cable from the seafloor. Cable removal shall occur from the mean high tide line to the seaward limit of the territorial waters of the State of California.
5. **Marine Discharge.** There shall be no marine discharge of sewage or bilge/ballast water from vessels either installing or repairing the E1 cable.
6. **Marine Mammals.** A trained marine mammal observer, to be approved by the Executive Director in consultation with the National Marine Fisheries Service, shall be on the cable lay or support vessel to monitor marine mammals that approach the project work area. In the event that, in the opinion of the observer, project operations have the potential to threaten the health or safety of marine mammals or have the potential to take, as defined by the Endangered Species Act, a marine mammal, the observer shall have the authority to terminate all project activities until the observer determines there is no longer a threat.
7. **Marine Mammal Report.** Within 30 days of completion of cable installation activities, the applicant shall submit to the Executive Director a copy of the marine mammal monitoring report required by condition 12 of the applicant's State Lands Commission lease(s).

8. **Ghost Nets.** In the event that trawlers snag and cut their trawl gear due to entanglement with the E1 cable, the applicant shall use all feasible measures to retrieve the trawl gear as soon possible but no later than six weeks after receiving notice of the incident. The applicant shall provide notice to the Executive Director within seven days of gear retrieval efforts.
9. **Hard Bottom Seafloor Survey.** Within 30 days of project completion, a video survey (displaying real-time position and water depth of the ROV) of the seafloor along the construction corridor shall be completed by a consultant approved by the Executive Director. Still-photographs of representative habitat shall be taken in any areas of high-relief rocky substrate traversed by the E1 cable. The survey shall quantify the extent of exposed rocky substrate, including type and relief, if any, impacted by offshore operations out to the seaward limit of the territorial waters of the State of California. Within 45 days of completing the survey, the applicant shall submit to the Executive Director a written report describing the results of the survey to derive net project impacts to rocky substrate. The survey report shall identify the location and quantify the extent of any disturbance to hard bottom caused by project operations.
10. **Hard Bottom Mitigation Fund.** The applicant shall compensate for all project-related impacts to hard bottom habitat through payment of a compensatory hard bottom mitigation fee to be used to construct a new artificial reef or augment an existing artificial reef in State waters within the Southern California Bight. The construction of a new artificial reef, or augmentation of an existing reef, shall be carried out pursuant to a Memorandum of Agreement by and between the California Coastal Commission, the California Department of Fish and Game and the United Anglers of Southern California (Exhibit 4).

The amount of the hard bottom mitigation fee shall be calculated by multiplying the total square footage of impacted hard bottom (as determined in the survey conducted under Special Condition 12) by a compensation rate of \$27.31 per square foot. The fee shall be paid to the United Anglers of Southern California within 30 calendar days of the results of the hard bottom survey required by Special Condition 12.

11. **Oil Spill.** Prior to issuance of this permit, the applicant shall submit for Executive Director approval a project-specific oil spill contingency plan that includes: (a) an estimate of a reasonable worst case spill from project operations pursuant to the nontank vessel contingency plan regulations found at 14 CCR Sections 825.03 - 827.02; (b) a list of all clean-up equipment that will be maintained on the primary work vessel (at a minimum, the equipment required in 14 CCR Sections 825.03-827.02); (c) the specific designation of the onsite person who will have responsibility for implementing the plan; and (d) for all project vessels, evidence of a contract with an oil spill response organization for on-water and shoreline protection capable of responding to a worst-case spill in the event that a spill exceeds the cleanup capability of the onsite work force.

STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
TELEPHONE AND TDD (415) 904-5200
(415) 904-5400



June 19, 2000

Mr. Bill Brungardt
Brungardt Honomichl & Company
10895 Grandview, Suite 150
Overland Park, KS 66210

RE: CC-059-00, Consistency Certification for AT&T Corporation E1 Fiber Optic Cable
Project, offshore San Luis Obispo County

Dear Mr. Brungardt:

On June 13, 2000, by a vote of 8-2-1 in favor, the California Coastal Commission concurred with that portion of consistency certification CC-059-00 which certifies that the E1 fiber optic cable is consistent with the enforceable policies of the California Coastal Management Program (CCMP).

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Chia", written over the word "Sincerely,".

Dan Chia
Coastal Program Analyst

cc: Coastal Commission, Central Coast District
Tiffany Welch, Army Corps of Engineers
Michael Drazee, County of San Luis Obispo

**AT&T China – U.S. Cable Network Project
in San Luis Obispo, California**

COASTAL CONSISTENCY CERTIFICATION

I. INTRODUCTION AND PROJECT OBJECTIVES

AT&T Corp. proposes to install two fiber optic cables on the seafloor from the Sandspit Road parking lot in Montaña de Oro State Park, San Luis Obispo County, California, out to sea in a generally westward direction. The cable would then be connected to an existing AT&T facility in the city of San Luis Obispo, San Luis Obispo County, California.

This Consistency Certification summarizes information contained in the Final Environmental Impact Report (FEIR), consisting of the Draft EIR (January 10, 2000) and Finalizing Addendum (March 2000), for the AT&T China – U.S. Cable Network project, prepared for the California State Lands Commission. The FEIR provides greater detail on the proposed project, the existing environment, the project's potential environmental effects, and environmental commitments to lessen impacts.

AT&T Corp. certifies that the proposed activity complies with California's approved coastal zone management program and will be conducted in a manner consistent with such program.

A. Federal Action.

The U.S. Army Corps of Engineers (Corps) has regulatory authority over the Project under Section 10 of the Rivers and Harbors Act of 1899, and under Section 404 of the Clean Water Act. AT&T will comply with the terms and conditions of the Corps' Nationwide Permit No. 12 (33 CFR 330). In compliance with 33 CFR 330.4(d)(3), General Condition No. 10, and 15 CFR 930.57(b), AT&T certifies that the proposed activity complies with California's approved coastal zone management program and will be conducted in a manner consistent with such program.

The Corps' authorization requires certification or waiver that the federal action will be consistent with State plans from the Regional Water Quality Control Board (RWQCB), pursuant to Section 401 of the CWA, and the California Coastal Commission, pursuant to Section 307 of the Coastal Zone Management Act. The Corps is in the process of consulting with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service pursuant to the Fish and Wildlife Coordination Act, the Endangered Species Act, the Marine Mammal Protection Act, and the Sustainable Fisheries Act to ensure that the project does not affect endangered species, marine mammals or essential fish habitats.

B. State Actions.

The California Coastal Commission has jurisdiction over the project seaward from the mean high tide line (MHTL) three nautical miles. The California State Lands Commission has acted as lead agency for the State pursuant to the California Environmental Quality Act (CEQA) and was the agency responsible for preparation and certification of the EIR. The California State Lands Commission approved a lease for the project and certified the EIR on April 20, 2000.

C. Project Objectives

The objective of the project is to provide a direct undersea telecommunication link between the U.S. and the People's Republic of China and other Pacific Rim countries. As proposed, the project would complete segments E1 and S7 of the China-U.S. Cable Network System by installing two submarine fiber optic cables that would connect into existing facilities near Morro Bay, California. Both of these cables are part of a "ring" system with landings in East Asia, Bandon, Oregon, and, as proposed here, Morro Bay.

The China-U.S. Cable System was conceived in response to the increasing demand among the Asia-Pacific Rim countries for access to digital information technology. The system will provide the first direct telecommunications links between the People's Republic of China and the United States, with system connections to Japan, Korea, and Guam.

The resulting "ring" system has four primary segments: an eastern segment running along the Pacific coast of the United States between Bandon, Oregon and the proposed landing at Morro Bay, a western segment linking nations along the western side of the Pacific Ocean, and northern and southern segments connecting the eastern and western segments across the Pacific Ocean.

As a "node" for connecting the eastern and southern portions of the system to onshore infrastructure, the proposed landing site near Morro Bay, San Luis Obispo County, California was selected for several reasons, among which were the previous review, permitting, and installation of three AT&T submarine cables at the same location; the ability of AT&T's previously permitted and constructed shore facilities, consisting of a submerged bore pipe, beach manhole, and conduit system at Montaña de Oro State Park, to accommodate the two new China-U.S. cables without requiring additional construction; and existing conduit access to AT&T's cable station in San Luis Obispo.

D. Background And Overview

AT&T is continually expanding and upgrading its global fiber optic cable network system. AT&T is proposing to install two new ocean cables into the San Luis Obispo area, utilizing previously permitted and constructed facilities in Montaña de Oro State Park and the immediate nearshore area. Within State Waters (generally referred to as "the 3-mile limit"

and legally extending to 3 nautical miles [nm] from the MHTL) and continuing across the continental shelf. The new fiber optic cables will carry all types of digital communications traffic including voice, data, and video. Because the new cables are links in a global network, they can service all types of customers throughout the world including private individuals, businesses, and governmental entities.

AT&T has had undersea cables that served their San Luis Obispo terminal since the early 1960s. In 1991, as part of the HAW-5 project (Morro Group 1991), AT&T installed four directional bore pipes out into the ocean and set a beach manhole in Montaña de Oro State Park. At that time, they installed one cable into one of the bore pipes. Additionally, AT&T installed an overland conduit system from the beach manhole to the terminal building located 10 miles (16 km) inland near the City of San Luis Obispo. As part of the project, AT&T constructed the Sandspit Beach parking lot and appurtenances to improve beach access for visitors to the park, and to allow access to the cable conduit system for maintenance or future cable installation. Later, in 1994, as part of the TPC-5 project (CSLC 1994), AT&T installed two more fiber optic cables in two of the bore pipes and conduit system. This left one remaining bore pipe vacant.

Installation of the HAW-5 cable on State Tidelands (extending out to the 3-nm limit) required a lease from the California State Lands Commission (CSLC). This lease, identified as PRC 7603, was amended to allow the installation of the two TPC-5 cables.

E. Proposed Project

AT&T Corporation, representing a consortium of 14 companies, proposes to install two fiber optic cables into the remaining vacant bore pipe at Montaña de Oro State Park. AT&T is the leaseholder on State Tidelands and is responsible for the project, which is part of the China-U.S. Cable Network. The other members of the consortium are MCI International, Inc.; SBCI-Pacific Networks, Inc.; Sprint Communications Company, L.P.; Teleglobe U.S.A., Inc.; China Telecom; Hong Kong Telecom International, Limited; Kokusai Denshin Denwa Co. Limited; Korea Telecom; NTT Worldwide Network Corporation, Limited; Singapore Telecommunications, Limited; International Telecommunications Development Corporation; Telstra Corporation, Limited; and Telekom Malaysia. One cable will provide service directly to the People's Republic of China and the other will provide a link to Bandon, Oregon before routing to the People's Republic of China. The cables will be installed by Tyco Submarine Systems Ltd. (TSSL) under contract to the consortium. The fiber optic cables are "armored," that is, protected, by one or more rings of galvanized steel wires and encased in a polypropylene-asphalt sheath, as described in more detail in Chapter 2 (see also Appendix A). The scope of the project is to pull the two cables (designated Segments S7 and E1), each with self contained power, into the last existing off-shore pipe to the beach manhole. From the ends of the pipe seaward, the cables will be buried along the alignment designated as the Maximum Burial Route in the EIR to a point where the water depth reaches 1,000 fathoms approximately 55 miles (90 km) offshore. From that point on the outer edge

of the continental shelf, the cables will be laid directly on the ocean bottom along courses defined by AT&T and the consortium during the design of the system, toward their destinations in the People's Republic of China and Bandon, Oregon. Figure 2 shows the proposed project in relation to AT&T's previous projects in the Morro Bay area.

In addition to approval of the Maximum Burial Route, AT&T also requests approval for the "2 in 2 Option," which would involve installing the E1 and S7 cables in separate bore pipes, with the S7 cable going into the existing AT&T bore pipe (as planned) and the E1 cable going into a yet-to-be-constructed MFS Globenet (MCI WorldCom) bore pipe (CSLC lease number PRC 8144) that would extend from the Sandspit parking lot to a point on the seafloor 100 m (330 feet) northeast of the existing AT&T bore pipe. AT&T will opt for the 2 in 2 option should the MFS Globenet bore pipe be ready to receive the cable at the time the E1 cable is ready to be landed. If the MFS Globenet bore pipe is not available, AT&T will land the E1 cable jointly with the S7 cable in the remaining AT&T bore pipe. The 2 in 2 Option E1 route parallels the Maximum Burial route described in the DEIR, joining the Maximum Burial route about 1 mile offshore.

II. PROJECT DESCRIPTION

The proposed project is the installation of two new fiber optic cables on the seafloor off of Morro Bay, San Luis Obispo County, California. The two cables constitute segments E1 and S7 of the China-U.S. Cable Network, a system that will serve the growing demand for telecommunications links to carry digital communications traffic between the United States, the People's Republic of China, and other Asian-Pacific Rim countries. Segments E1 and S7 will complete the China-U.S. Cable Network ring configuration, which requires a landing in the San Luis Obispo area to connect the system via existing conduit to AT&T's San Luis Obispo terminal. Segments E1 and S7 were designed to make use of previously permitted and constructed facilities, including a beach manhole at the Sandspit parking lot at Montaña de Oro State Park and an empty bore pipe that extends underground from the manhole to an exit point 0.5 nautical miles (nm) offshore in 13 meters (m) (43 feet) of water.

From the bore pipe, the two cables, each measuring approximately 1 to 2 inches in diameter, would be laid across the continental shelf. The cables would be buried beneath the surface, to depths of at least 1.0 meter, wherever possible depending on substrate conditions, out to a depth of 1,800 meters (6,000 feet [1,000 fathoms]). In deeper water, continuing off the continental shelf, the cables would be laid directly on the bottom to their destinations. The E1 cable would connect to Bandon, Oregon, while the S7 cable would provide the first direct fiber optic connection between China and North America.

Based on the Draft Environmental Impact Report (DEIR) and considering public comments received, **AT&T proposes to install the cables along the Maximum Burial Alternative Routes** that are fully evaluated in the DEIR, and found to be the CEQA

Environmentally Superior Alternative to the original proposed routes. The Maximum Burial Routes would result in greater than 99 percent burial of the two cables across the continental shelf.

AT&T has specified the vessel *MSV Seaspread* or a similar vessel as the cable-laying ship to be used for the nearshore and California shelf cable installation process. It is similar to the *MV American Patriot* described in the DEIR, is a more stable vessel that is better suited to installing cables along the Maximum Burial routes. The environmental consequences of using the *Seaspread* versus the *Patriot* are limited to air quality and are discussed in that section of the Findings below.

The "2 in 2 Option" and the specification of the *MSV Seaspread* cable-laying vessel are described and discussed as Project Implementation Options in the Finalizing Addendum to the DEIR (March 2000). Descriptive information and conclusions applicable to these Project Implementation Options are included in each appropriate section below.

A. Project Location

The project includes shore-end, nearshore, and offshore activities. The location for the shore-end activities is the existing chip sealed parking lot at Sandspit Beach in Montaña de Oro State Park, located just south of Morro Bay. The nearshore activities will take place between the end of the existing bore pipe (or existing bore pipe and new bore pipe if the 2 in 2 Option is adopted) and the 3-nm limit offshore. The offshore locations are the cable alignments for both proposed cables beyond the 3-nm limit.

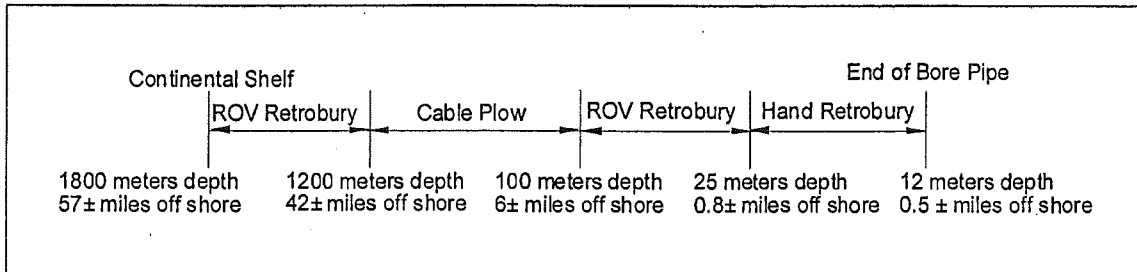
B. Cable Characteristics

The cables are 1 to 2 inches in diameter. Three different cable types will be utilized to provide an appropriate degree of protection for the cable from geologic and sedimentary conditions encountered during installation, and from potential interactions with fishing gear. All cable types surround a core of optical fibers encased in rings of steel wires, copper sheathing, polyethylene insulation, and nylon yarn coated with asphalt to prevent seawater penetration. No antifouling coatings or corrosion inhibitors other than the asphalt coatings are used in any of the cables. The cables carry a constant DC current of 1.3 Amps.

C. Cable Burial

AT&T proposes cable burial, where feasible, to a depth of at least 1.0 meter. This burial depth reflects the incorporation of DEIR mitigation measure CRF-1c (see

below). AT&T proposes cable burial where feasible out to water depths of 1,000 fathoms in order to minimize the possibility of conflicts with commercial fishing, especially with bottom trawling. This burial depth is about 3 times the depth of sediment disturbance usually attributed to bottom trawling. Burial will be accomplished by a combination of Sea Plow, Remote Operated Vehicle (ROV) and diver jet burial as illustrated below.



Recognizing that cable burial would mitigate potential impacts on fishing and that placement of the cable in soft-bottom areas would avoid marine biological impacts that could occur where cables cross rocky areas and cannot be buried, AT&T worked with MCI-WorldCom to identify cable routes that would maximize the burial of each of five cables currently proposed for landing at the Montaña de Oro site. With the resulting Maximum Burial Alternative China-U.S. routes that are now proposed by AT&T, over 99 percent of the cables would be buried.

D. Shore-End Activities

Shore-end activity consists of cleaning and testing the existing bore pipe and pulling the Segment S7 and E1 ocean cables into the beach manhole located in the existing parking lot in Montaña De Oro State Park. In that manhole, the cables will be connected to existing land power and fiber cables. Shore-end activities have been approved by San Luis Obispo County and the California Department of Parks and Recreation, and AT&T will continue to coordinate with these agencies during project construction. It is expected that cable installation activities at the Sandspit Parking Lot would take up about half of the available space (25 out of 50 parking spaces) in the parking lot, and may require closure for 1 to 2 weeks.

With the 2 in 2 Option, the parking lot would be closed for approximately 2 weeks as there would be two separate pipe cleaning/testing and cable pulling operations. The overall period of parking lot occupation, however, would not be lengthened on the assumption that MCI-WorldCom and AT&T contractors are occupying the parking lot at the same time for purposes of constructing their respective projects. The contractors for the two companies have already coordinated their activities to insure that they can occupy the lot simultaneously without disrupting the other.

E. Nearshore and Offshore Activities

The nearshore activities include those activities necessary to install the E1 cable and the S7 cable into the existing bore pipe. These activities will involve a pre-lay grapnel run, feeding the cables off the stern of a ship, pulling them through the pipe and into the beach manhole, and laying them to a point 3.1 miles (5 km) offshore. The subsequent offshore activities will include splicing a cable onto the nearshore cable segment and laying or plowing the offshore segment approximately to the continental shelf.

These activities will take place in five steps. Step 1 will include exposing the bore pipe and preparing it for the cable landing. Step 2 will involve installing two submarine cables into the existing bore pipe and laying them to just beyond the 3-nm limit offshore. Step 3 will include the retro burial of the cables by hand jetting between the bore pipe and 0.8 mile (1.3 km) offshore. Step 4 will involve installing two submarine cables from 3.1 miles (5 km) to approximately 57 miles (92 km) offshore. Step 5 will include cable installation by retro-burial and plowing from approximately 0.8 mile (1.3 km) offshore to approximately 57 miles (92 km) offshore.

The pre-lay grapnel run will take several days. Subsequent nearshore activities will take 1 to 2 weeks. Offshore activities will take 2 to 3 weeks. All activities will be synchronized as closely as possible.

With the 2 in 2 Option, each of the E1 and S7 cables would be separately pulled into its own bore pipe, then laid along its course to the point offshore where it would be buoyed.

F. Maintenance, Repair, and Abandonment

Other than ensuring the power feed and transmission equipment in the terminal station are in proper working order, no routine maintenance is planned or expected to be necessary for the submerged portion of the China-U.S. cable network. "Cable faults" that necessitate repairs rarely occur on modern buried fiber optic cables. If a repair is needed, divers, ROV, or grapnel, depending on depth, would be used to retrieve the cable from the seafloor at the point of the fault, and a new section of cable would be spliced in by a cable repair ship at the surface. The repaired cable would then be replaced and re-buried.

The State Lands Commission will require AT&T, upon abandonment of the cables, to remove all conduit and inactive cable from the Mean High Tide Line to the limit of the agency's jurisdiction, as necessary so as not to interfere with commercial fishing activities in areas where such cables were previously installed. Prior to removal of any conduit or cable, AT&T will submit plans and specifications to the State Lands Commission and the California Coastal Commission that describe the proposed

removal process. No removal will be undertaken unless and until approved by these agencies.

Detailed environmental analysis of the effects of cable removal will require an assessment of the environmental conditions at the time of removal. Although it is not possible to predict these conditions 25 years hence (the term of the lease), environmental impacts associated with removal of buried cables can be expected to be roughly comparable to the impacts associated with the installation and burial of the cables on the assumption that there is no significant change in the affected environment over the life of the cables.

III. RELEVANT COASTAL ACT POLICIES

This section will discuss relevant sections of the California Coastal Act, affects the proposed project may have on protected resources, and measures intended to avoid, minimize and mitigate any unavoidable impacts. Mitigation measures for which A T & T is obligated under the provisions of its lease with the California State Lands Commission, are summarized in the relevant paragraphs of this section.

Article 2 – Public Access (Sections 30210-30214)

The project conforms with the public access objectives of the California Coastal Act by maintaining public access to Montaña de Oro State Park, including access to the beach below the Sandspit Road parking lot, where cable pulling will occur. A T & T and California Department of Parks and Recreation will also provide signage, shuttle service, temporary restrooms, parking docents and shall maintain safety and accessibility for bicyclists to minimize disruption to coastal access.

Article 3 – Recreation (Sections 30220-30224)

No impacts to recreation were identified during the FEIR or Corps PCN process. Any potential impacts to recreation are associated to the public access issues discussed above. Since recreational access to the beach below Sandspit Parking Lot will be maintained throughout the project (see mitigation measure RES-1 in Section IV), there will be no adverse impacts to recreational resources, including water-related recreation accessed via the Sandspit Parking Lot trail.

Offshore project activities will not significantly inhibit use by recreational boaters or fishermen. Cable-laying activities will take place during 1-3 days per cable, and impacts on marine traffic will be insignificant as the vessels slowly travel along the cable route. Recreational fishing vessels will receive notice of cable-laying activities before those activities occur through the required notice to mariners. The small and easily-maneuverable recreation fishing vessels would have no difficulty seeing and avoiding the slow-moving cable-laying vessels. There would be insignificant, temporary impacts to the recreational fishing industry's socio-economics. The proposed project would not result in a decrease in the volume of harvests realized by

the public or commercial (charter boat) recreational fishing industry in the area. Any impact that may be experienced by recreational fishing would be temporary and insignificant given the total area of recreational fishing grounds available.

Article 4 – Marine Environment (Sections 30230-30237)

The project will have no impacts to wetlands or other waters of the United States on the landward side of the project.

Softbottom Marine Habitat. Any impacts to softbottom habitats and populations of benthic invertebrates residing in the activity area would be temporary and highly localized. Project actions that would affect the softbottom habitat include pre-clearing, temporary anchors during cable lay, jetting, and cable burial. Affected benthic species include invertebrates such as sea pens, tube-dwelling polychaete worms, seastars, and flatfishes. Displacement of and/or mortality to these organisms would occur within small, localized areas that are an extremely small fraction of the available area of soft-bottom habitat in the project vicinity. The impact on the habitat will be temporary, and recolonization and recruitment from adjacent areas would be rapid, such that population densities would be indistinguishable from adjacent areas within a few months to a year.

Hardbottom Marine Habitat. The applicant has routed the cables to avoid hard-bottom habitat to the maximum extent possible. The “Maximum Burial Routes” that are now proposed avoid the extensive areas of high-relief (greater than one meter height) rocky substrate that are known to exist off of Morro Bay. During cable installation, substrate conditions and cable burial will be monitored, and any sections of exposed cable will be relocated off of rock projections by divers and ROV to maximize the burial of the cables and avoid spans between rocks. Placement of the cables across some areas of hard substrate may be unavoidable, but the area of potential disturbance amounts to a small fraction of one percent of the available habitat in the vicinity. Observations of cables previously laid in rocky areas indicates that under such circumstances resident organisms, typically low-profile, fast-growing species of algal turf and invertebrates, will recolonize the substrate and grow over the cable itself. Species of concern, such as the coral *Allopora*, that are slow-growing, structurally complex, and vulnerable to damage, are not prevalent along the cable routes.

Water Quality. Construction and cable installation will be carried out in accordance with the terms and conditions of the Regional Water Quality Control Board’s (RWQCB) approved water quality plan. Project-related turbidity increases will be brief and highly localized. Temporary increased particulate load, caused by water jetting at the portal locations and along the cable routes, and by cable burial, will occur during cable and conduit installation.

There will be no discharge of sewage or bilge/ballast water from vessels performing work associated with the project while operating within U.S. territorial waters. The

potential for an accidental discharge of oil to marine waters shall be mitigated through the presence of an oil spill response plan maintained by the cable lay vessel. The Oil Spill Response Plan and Contingency Plan and prohibition of bilge/ballast and sewer discharges will ensure that impacts from vessel operations on the marine environment are insignificant.

Cable Properties. The cable emits no electrical field, and the magnetic field is weaker than that of the earth in the project vicinity.

No anti-fouling substance will be added to the protective cover on the cables other than a naturally occurring bitumen (asphalt) coating. Bitumen-treated armored cables are normally coated with encrusting epibiota, suggesting the non-harmful nature of the bitumen coating. Because no other anti-biofouling agents will be added to the cable, the impacts to the marine environment will be insignificant.

Fishing. The overall socio-economic impact on the commercial fishing industry of the proposed A T & T cable landing is negligible. The proposed project will not result in a decrease in the volume or value of harvests realized by the commercial fishing industry in the area. Additional operational costs, possible gear loss and associated short-term harvest have been adequately mitigated by selection of a substantially buriable cable route and compensation provided in the negotiated agreement between A T & T, and two other fiber optic cable companies and the commercial fishers of the Morro Bay area.

This agreement, known as the "Interim Agreement between Cable Companies and Fishermen" dated July 22, 1999, provides for the establishment of the Central California Joint Cables/Fisheries Liaison Committee, made up of four representatives each of the commercial fishermen and the fiber optic cable companies. This entity has been incorporated under California law as a California Mutual Benefit Non-Profit Corporation. The Liaison Committee has adopted bylaws and procedures that provide for publicly noticed open meetings, election of members, accounting and other procedural issues. The Liaison Committee is the administrative mechanism to oversee implementation of the provisions of the Agreement dated July 22, 1999.

Provisions of the Agreement that will be performed by the companies include:

- Notification of fishing organizations, U.S. Coast Guard, California Coastal Commission, California State Lands Commission, Department of Fish and Game, County of San Luis Obispo, City of Morro Bay and the Port San Luis Harbor District of specific information regarding installation schedules and locations prior to beginning any construction;
- Burial of the fiber optic cables to a minimum depth of 36 inches below the seabed where feasible, ideally with less than 5% cable exposure due to hard ground, rock seabed or other features which may inhibit burial between three miles from shore and 1000 fathoms water depth;

- Post installation confirmation of burial depth and regular inspections every 18 to 24 months to assure cable burial;
- Provision of a 24-hour toll-free phone number and free up-to-date nautical charts showing cable locations and any areas where the cables may be buried to less than target depth;
- Payment of \$500 to commercial fishermen owning and operating vessels engaged in trawl fishing in the project area for use in upgrading communication and navigation equipment;
- Reimbursement of 150% of the replacement cost of gear lost to cable snags to cover the gear cost and lost time;
- Payment of \$100,000 per year to a Commercial Fishing Industry Improvement Fund;
- Removal of out-of-service cables that may interfere with commercial fishing.
- Provisions of the Agreement that have been, or will be performed by the Liaison Committee include:
 - Adopt Fishing Vessel Operating Procedures to guide the operation of commercial trawl vessels in the vicinity of cables (draft Operating Procedures adopted in August, 1999);
 - Provide a dispute resolution process through mediation and arbitration, if necessary, to resolve resolution of disputes that may arise over claims for lost equipment or damage to the cables;
 - Administer all funds available to the Committee, including the Commercial Fishing Industry Improvement Fund;
 - Distribute information to the commercial fishing community regarding the location of the cables, the Agreement, the Liaison Committee and its function, and the Fishing Vessel Operating Procedures.

Pursuant to the Agreement, fishermen who operate consistent with the Fishing Vessel Operating procedures adopted by the Liaison Committee will be held harmless for damage that may be inflicted upon the cables. Pursuant to lease conditions, this liability protection, as well as the requirement to reimburse fishermen for 150% of lost gear will extend to all fishermen. The harbor masters of both Port San Luis and the City of Morro Bay have agreed to promptly notify the Liaison committee representative of all itinerant transient commercial fishing vessels, so that they may

be contacted and informed about the Agreement and the Fishing Vessel Operating Procedures.

Article 5 – Land Resources (Sections 30240-330244)

The project avoids impacts to environmentally sensitive areas and disruption of habitat values, because it is located in an existing utility right-of-way. Three AT&T cables and four conduits currently extend seaward from Sandspit Road parking lot, which was created for the purpose of landing the AT&T submarine cables. The use of the existing parking lot consolidates an existing land use at a suitable location. All impacts to sensitive coastal dune scrub habitat will be avoided through the use of existing conduits, or in the case of the 2 in 2 Option, the MCIWorldcom conduit that has already been permitted for construction. All landward fiber optic cables in the Coastal Zone will be pulled into existing conduit.

Article 6 – Development (Sections 30250-30255)

The project demonstrates consistency with Section 30250 because it is located in and proximate to an existing submarine fiber optic cable corridor. The project is entirely underground, so impacts to scenic resources will be temporary (during construction). Once installed, most coastal users will be unaware of its existence in the project corridor.

IV. SUMMARY OF MITIGATION MEASURES

This chapter summarizes all mitigation measures that the applicant has agreed to perform on the project. The mitigation measures are organized by the following areas:

- Air Quality
- Geology
- Water Quality
- Biological Resources
- Cultural Resources
- Commercial and Recreational Fishing
- Land Use and Recreation
- Aesthetics and Noise
- Marine Transportation
- System Safety/Risk of Upset
- Socioeconomics
- Onshore Traffic, Public Services and Utilities

A. Air Quality

AQ-1. The injection timing on diesel-powered vessels will be retarded 4° prior to and throughout cable installation with the exception of the main cable ships which

will be operated at 3° retardation. These measures will produce a 20-25 percent reduction in emissions of nitrogen oxides (NOx).

AQ-2. Onshore equipment will use low-sulfur/low-aromatic diesel fuel as designated by the ARB. Ocean vessels will burn low-sulfur diesel fuel as designated by the EPA.

AQ-3. With the exception of marine vessel injection timing retard (AQ-1), all diesel powered construction equipment will be properly tuned, well maintained, and operated within manufacturer's specifications.

AQ-4. AT&T will contribute \$6,000 to a San Luis Obispo County APCD program, based on the average costs of air quality offsets provided by the APCD, to offset NOx emissions.

B. Geology

No Mitigation Measures.

C. Water Quality

No Mitigation Measures

D. Biology

MB-1. Based on the most detailed and current maps of seafloor substrate conditions available, high-relief areas that could be subject to disturbance from anchoring by project vessels should be mapped with coordinate locations specified and designated as "no-anchor zones" on final approved plans for cable installation. These areas should continue to be shown on as-builts and project maps that could be used in future repair or abandonment activities.

MB-2. A marine mammal training video or photographic presentation shall be reviewed by all shipboard personnel involved with cable operations to emphasize the types of mammals that may occur in the project area, general habits and distribution, and methods to avoid impacts. Included in the presentation shall be a listing of contact numbers to report marine mammals in distress, and a requirement to make a verbal report if any such mammals are observed during project operations.

MB-3. A biologist familiar with marine mammal behavior shall be present during installation and repair activities to observe for marine mammals that approach the project area. The observer shall be authorized to call a halt to project activities that pose a risk of injury to marine mammals.

E. Cultural Resources

CR-1. Prior to the pre-lay grapnel run and cable installation, the applicant shall provide a detailed analysis by a qualified marine archaeologist of side scan sonar and magnetometer data for the cable route between the shoreline and the 3-nm limit. The analysis shall identify and analyze all magnetic and side scan sonar anomalies that occur in the cable corridor, which is defined by a lateral distance of 0.5 kilometer on each side of the proposed cable route. The analysis shall also include investigation of the potential cultural significance of each anomaly identified within the cable corridor that cannot be avoided. The applicant must submit the side scan sonar and magnetometer data, and an accompanying report which analyzes the data. Final approval from the State Lands Commission staff must be received prior to the pre-lay grapnel run and cable installation.

CR-2. Should a previously unknown shipwreck of potential cultural resource value be discovered within the proposed cable corridor as a result of the study required in CR-1, the proposed cable route or installation procedures shall be modified to avoid the potentially significant cultural resource.

F. Commercial and Recreational Fishing

CRF-1 - To mitigate impacts on commercial and recreational fishing resulting from the China-U.S. project, the following measures shall be implemented:

- a. Throughout the life of the project, AT&T will adhere to the noticing procedures that are specified in the project description.
- b. AT&T will participate in and fund the operations of the Morro Bay Joint Cable/Fisheries Liaison Committee. The purpose of the Committee is to discuss and resolve issues relating to telecommunications cables owned and operated by the cable companies, including AT&T, along the California coast adjacent to Morro Bay.
- c. Where feasible, AT&T cables will be buried to a depth of 1.0 meter in areas between three miles from shore and 1,000 fathoms (1,800 m) water depth.
- d. The timing and methods of construction and installation of the individual cables will be determined by AT&T in consultation with the Committee to avoid or minimize any negative impacts to the fishing industry.
- e. A Committee fisherman representative will be offered the opportunity to be on board the cable installation vessel to observe cable installation.
- f. Following installation of the cables, AT&T will provide cable "as built" coordinates to the fishermen in writing, electronically, and on navigational charts.

- g. AT&T will conduct burial verification of the cables by Remote Operated Vehicle every 18 to 24 months and after any event that may affect the cables. Such inspection will occur within approximately 30 days after the event, depending on weather. "Event" for the purposes of this measure is defined as: an incident or activity (such as a gear snag), the circumstances of which indicate the likelihood that a cable has become unburied; or act of God, such as an earthquake in the vicinity of the cables measuring 5.0 or greater on the Richter scale that could cause deformation of the sea floor or underwater land slides, or an unusually severe storm or tidal wave that could cause excessive ocean floor scouring. Copies of the videotapes recording the verification will be provided to the Committee, the CSLC, and the CCC.
- h. Each licensed fisherman owning and operating vessels engaged in trawl fishing in the area of the proposed cables who signs the Fishing Agreement will receive a payment from the participating cable companies for upgrading communication and navigation equipment.
- i. AT&T, either independently or in conjunction with other cable companies, will provide a 24-hour toll-free telephone "hotline" to receive calls from fishermen who believe they have snagged gear on a telecommunications cable.
- j. In the event that a fisherman sacrifices gear in order to avoid injury to an AT&T submarine cable, AT&T will pay 100% of the gear equipment replacement costs, and will pay an additional 50% of those gear replacement costs to compensate the fisherman for loss of catch and fishing opportunity. The full amount of this payment shall be available to any fisherman who sacrifices gear in order to avoid injury to an AT&T submarine cable, regardless of whether the fishermen has signed the Fishing Agreement.
- k. AT&T will release any claims that it might have for damage to cables against fishermen that comply with the terms of the applicable Fishing Agreement and the Fishing Vessel Operating Procedures established by the Committee.
- l. When the cables to be installed are taken out of service, AT&T will submit a plan for their removal so as not to interfere with commercial fishing activities in areas where such cables were previously installed.

G. Land Use and Recreation

REC-1. Prior to cable installation, AT&T shall obtain the approval of the Department of Parks and Recreation and the staff of the State Lands Commission for the scheduling and location of project activities at the parking lot, incorporating measures to ensure the availability of parking, restrooms, and pedestrian access to the beach during project activities.

H. Aesthetics and Noise

No Mitigation Measures

I. Marine Transportation

No Mitigation Measures

J. System Safety/Risk of Upset

No Mitigation Measures.

K. Socioeconomics

Implementation of mitigation measure CFR-1, as described above in Section F, "Commercial and Recreational Fishing," will be required to mitigate socioeconomic impacts.

REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
VENTURA FIELD OFFICE
2151 ALESSANDRO DRIVE, SUITE 295
VENTURA, CALIFORNIA 93001

June 20, 2000

Office of the Chief
Regulatory Branch**DEPARTMENT OF THE ARMY NATIONWIDE PERMIT AUTHORIZATION**

AT&T
 c/o Beveridge & Diamond
 Attorneys at Law
 Attn: Mr. Gary Smith
 One Sansome Street, Suite 3400
 San Francisco, California 94104

Dear Mr. Smith:

This is in reply to your request (No. 995008200-TW) dated June 19, 2000, concerning our permit authority under Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) over your proposal to install, maintain, and repair the proposed E1 fiber optic cable on and below the ocean floor under the "Maximum Burial Alternative" or the "2 in 2 Option" for AT&T's China-US Fiber Optic Cable Project. Under both alternatives, the offshore cable would be installed by laying the cable on the seafloor using a seaplow, remotely operated vehicle and/or jetting. The cable would be buried from the existing conduit ends to the 1,000 fathom isobath; beyond that depth, the cable would lie on the seafloor. The project is located in the City of Morro Bay, San Luis Obispo County, California.

The Corps of Engineers has determined that your proposed activity complies with the terms and conditions of nationwide permit 12 [Federal Register, March 9, 2000] for utility line installation projects.

As long as you comply with the attached nationwide permit terms and conditions, an individual permit is not required. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time. Presently, all nationwide permits are scheduled to expire on February 11, 2002. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice announcing the changes when they occur.

Furthermore, you must comply with the following Special Conditions:

1. The permittee shall implement the Essential Fish Habitat conservation recommendations from the National Marine Fisheries Service included in their letter dated May 23, 2000.
2. The permittee shall adhere to the conditions imposed by the California Coastal Commission (CCC) in Coastal Development Permit E-98-029, dated June 19, 2000 and the federal consistency certification CC-059-00 included in the CCC's staff report dated May 25, 2000.

002

VENTURA REGULATORY

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- Copies of all reports and plans provided to the CCC shall be provided to the Corps.
3. The permittee shall adhere to the mitigation measures included in the California Regional Water Quality Control Board's letter dated April 26, 2000.
 4. The permittee shall adhere to conditions imposed by the California State Lands Commission in their lease executed on May 5, 2000.
 5. The permittee shall limit the use of lubricants applied in the marine environment to non-petroleum based products. No lubricants known to be toxic to marine organisms shall be used. The permittee shall use the best available engineering techniques to minimize the volume of lubricants applied to the cables and discharged to the marine environment and to contain the lubricant within the conduit. The permittee shall use seawater as the cable lubricant.

A nationwide permit does not grant any property rights or exclusive privileges. Also, it does not authorize any injury to the property or rights of others or authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, state, or local authorizations required by law.

Thank you for participating in our regulatory program. If you have any questions, please contact Tiffany Welch of my staff at (805) 641-2935.

Sincerely,

Tiffany A.R. Welch
 for David J. Castanon
 Chief, North Coast Section
 Regulatory Branch

Enclosure

LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS

CERTIFICATION OF COMPLIANCE WITH
DEPARTMENT OF THE ARMY NATIONWIDE PERMIT

Permit Number: 995008200-TW

Name of Permittee: AT&T

Date of Issuance: June 20, 2000

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

U.S Army Corps of Engineers
Regulatory Branch
ATTN: CESPL-CO-R-995008200-TW
P.O BOX 532711
Los Angeles, CA 90053-2325

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this nationwide permit you may be subject to permit suspension, modification, or revocation procedures as contained in 33 CFR 330.5 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit condition(s).

Signature of Permittee

Date

NATIONWIDE PERMIT NUMBER NW12 TERMS AND CONDITIONS

1. Nationwide Permit NW12 Terms:

Your activity is authorized under NW12 subject to the following terms:

12. Utility Line Activities: Activities required for the construction, maintenance, and repair of utility lines and associated facilities in waters of the United States as follows:

(i) **Utility lines:** The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the United States, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the United States through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) **Utility line substations:** The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than 1/2 acre of non-tidal waters of the United States.

(iii) **Foundations for overhead utility line towers, poles, and anchors:** The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) **Access roads:** The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than 1/2 acre of non-tidal waters of the United States. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the United States and as near as possible to preconstruction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

The term "utility line" does not include activities which drain a water of the United States, such as drainage tile or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Waters of the United States temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevations, are not included in the calculation of permanent loss of waters of the United States. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the United States are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized landclearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance, and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible.

The area of waters of the United States that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the United States, even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

- (a) Mechanized land clearing in a forested wetland for the utility line right-of-way;
- (b) A Section 10 permit is required;
- (c) The utility line in waters of the United States, excluding overhead lines, exceeds 500 feet;
- (d) The utility line is placed within a jurisdictional area (i.e., a water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area;

(e) Discharges associated with the construction of utility line substations that result in the loss of greater than 1/10 acre of waters of the United States;

(f) Permanent access roads constructed above grade in waters of the United States for a distance of more than 500 feet; or

(g) Permanent access roads constructed in waters of the United States with impervious materials. (Sections 10 and 404)

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the United States, which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

Note 3: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the utility line to protect navigation.

2. Nationwide Permit General Conditions

The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. **Navigation.** No activity may cause more than a minimal adverse effect on navigation.
2. **Proper Maintenance.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.
4. **Aquatic Life Movements.** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
5. **Equipment.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. **Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions which may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 water quality certification and Coastal Zone Management Act consistency determination.
7. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
8. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. **Water Quality.** (a) In certain States and tribal lands an individual 401 water quality certification must be obtained or waived (See 33 CFR 330.4(c)).
(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the State or tribal 401 certification (either generically or individually) does not require or approve a water quality management plan, the permittee must include design criteria and techniques that will ensure that the authorized work does not result in more than minimal degradation of water quality. An important component of a water quality management plan includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality. Refer to General Condition 21 for stormwater management requirements. Another important component of a water quality management plan is the establishment and maintenance of vegetated buffers next to open waters, including streams. Refer to General Condition 19 for vegetated buffer requirements for the NWPs.
10. **Coastal Zone Management.** In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).
11. **Endangered Species.** (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal

Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWFs.

(b) Authorization of an activity by a nationwide permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at <http://www.fws.gov/x4endspp/endspp.html> and http://www.nmfs.gov/prot_res/esahome.html, respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification. (a) Timing: Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the PCN is complete within 30 days of the date of receipt and can request the additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an individual permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Notification: The notification must be in writing and include the following information:

(1) Name, address, and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity; and

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7, Outfall Structures and Maintenance, the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed.

(6) For NWP 14, Linear Transportation Crossings, the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the United States and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable.

(7) For NWP 21, Surface Coal Mining Activities, the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan.

(8) For NWP 27, Stream and Wetland Restoration, the PCN must include documentation of the prior condition of the site that will be reverted by the permittee.

(9) For NWP 29, Single-Family Housing, the PCN must also include:

- (i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;
 - (ii) A statement that the single-family housing activity is for a personal residence of the permittee;
 - (iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 1/4 acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 1/4 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));
 - (iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;
 - (10) For NWP 31, Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:
 - (i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;
 - (ii) A delineation of any affected special aquatic sites, including wetlands; and,
 - (iii) Location of the dredged material disposal site.
 - (11) For NWP 33, Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.
 - (12) For NWPs 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site.
 - (13) For NWP 39, Residential, Commercial, and Institutional Developments, the PCN must include a compensatory mitigation proposal that offsets unavoidable losses of waters of the United States or justification explaining why compensatory mitigation should not be required.
 - (14) For NWP 40, Agricultural Activities, the PCN must include a compensatory mitigation proposal to offset losses of waters of the United States.
 - (15) For NWP 43, Stormwater Management Facilities, the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with State and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the United States.
 - (16) For NWP 44, Mining Activities, the PCN must include a description of all waters of the United States adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the United States, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities).
 - (17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.
 - (18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.
 - (19) For NWPs 12, 14, 29, 39, 40, 42, 43, and 44, where the proposed work involves discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within 100-year floodplains (as identified on FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps), the notification must include documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved local floodplain construction requirements.
 - (c) Form of Notification: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(19) of General Condition 13. A letter containing the requisite information may also be used.
 - (d) District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the PCN to expedite the process and the District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary.
- Any compensatory mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the

District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either: (1) that the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required in order to ensure no more than minimal adverse effects on the aquatic environment, the activity will be authorized within the 45-day PCN period, including the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the United States will occur until the District Engineer has approved a specific mitigation plan.

(e) Agency Coordination: The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse effects on the aquatic environment to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than 1/2 acre of waters of the United States, the District Engineer will, upon receipt of a notification, provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner), a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to National Marine Fisheries Service within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) Wetlands Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(9)(iii) for parcels less than 1/4 acre in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. Compliance Certification. Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter. The certification will include: a.) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; b.) A statement that any required mitigation was completed in accordance with the permit conditions; and c.) The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3 acre.

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

19. **Mitigation.** The project must be designed and constructed to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable at the project site (i.e., on site). Mitigation will be required when necessary to ensure that the adverse effects to the aquatic environment are minimal. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed;

(b) The District Engineer will require restoration, creation, enhancement, or preservation of other aquatic resources in order to offset the authorized impacts to the extent necessary to ensure that the adverse effects on the aquatic environment are minimal. An important element of any compensatory mitigation plan for projects in or near streams or other open waters is the establishment and maintenance, to the maximum extent practicable, of vegetated buffers next to open waters on the project site. The vegetated buffer should consist of native species. The District Engineer will determine the appropriate width of the vegetated buffer and in which cases it will be required. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require wider vegetated buffers to address documented water quality concerns. If there are open waters on the project site and the District Engineer requires compensatory mitigation for wetland impacts to ensure that the net adverse effects on the aquatic environment are minimal, any vegetated buffer will comprise no more than 1/3 of the remaining compensatory mitigation acreage after the permanently filled wetlands have been replaced on a one-to-one acreage basis. In addition, compensatory mitigation must address adverse effects on wetland functions and values and cannot be used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWP's (e.g., for NWP 39, 1/4 acre of wetlands cannot be created to change a 1/2 acre loss of wetlands to a 1/4 acre loss; however, 1/2 acre of created wetlands can be used to reduce the impacts of a 1/3 acre loss of wetlands). If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed.

(c) To the extent appropriate, permittees should consider mitigation banking and other appropriate forms of compensatory mitigation. If the District Engineer determines that compensatory mitigation is necessary to offset losses of waters of the United States and ensure that the net adverse effects of the authorized work on the aquatic environment are minimal, consolidated mitigation approaches, such as mitigation banks, will be the preferred method of providing compensatory mitigation, unless the District Engineer determines that activity-specific compensatory mitigation is more appropriate, based on which is best for the aquatic environment. These types of mitigation are preferred because they involve larger blocks of protected aquatic environment, are more likely to meet the mitigation goals, and are more easily checked for compliance. If a mitigation bank or other consolidated mitigation approach is not available in the watershed, the District Engineer will consider other appropriate forms of compensatory mitigation to offset the losses of waters of the United States to ensure that the net adverse effects of the authorized work on the aquatic environment are minimal.

20. **Spawning Areas.** Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. **Management of Water Flows.** To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and must not increase water flows from the project site, relocate water, or redirect water flow beyond preconstruction conditions. In addition, the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows.

22. **Adverse Effects From Impoundments.** If the activity, including structures and work in navigable waters of the United States or discharge of dredged or fill material, creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

23. **Waterfowl Breeding Areas.** Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. **Removal of Temporary Fills.** Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. **Designated Critical Resource Waters.** Critical resource waters include, NOAA-designated marine sanctuaries,

National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the United States are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the United States may be authorized by the above NWP's in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with this condition.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWP's only after he determines that the impacts to the critical resource waters will be no more than minimal.

26. Fills Within 100-Year Floodplains. For purposes of this general condition, 100-year floodplains will be identified through the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) Discharges Below Headwaters. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the 100-year floodplain at or below the point on a stream where the average annual flow is five cubic feet per second (i.e., below headwaters) are not authorized by NWP's 29, 39, 40, 42, 43, and 44. For NWP's 12 and 14, the prospective permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above-grade fills in waters of the United States within the 100-year floodplain below headwaters comply with FEMA or FEMA-approved local floodplain construction requirements.

(b) Discharges in Headwaters (i.e., above the point on a stream where the average annual flow is five cubic feet per second).

(1) Flood Fringe. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the flood fringe of the 100-year floodplain of headwaters are not authorized by NWP's 12, 14, 29, 39, 40, 42, 43, and 44, unless the prospective permittee notifies the District Engineer in accordance with General Condition 13. The notification must include documentation that such discharges comply with FEMA or FEMA-approved local floodplain construction requirements.

(2) Floodway. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the floodway of the 100-year floodplain of headwaters are not authorized by NWP's 29, 39, 40, 42, 43, and 44. For NWP's 12 and 14, the permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above grade fills proposed in the floodway comply with FEMA or FEMA-approved local floodplain construction requirements.

D. Further Information:

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWP's do not obviate the need to obtain other Federal, State, or local permits, approvals, or authorizations required by law.
3. NWP's do not grant any property rights or exclusive privileges.
4. NWP's do not authorize any injury to the property or rights of others.
5. NWP's do not authorize interference with any existing or proposed Federal project.

3. Regional Conditions for Nationwide Permits: Not applicable.

4. Further information:

A. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

B. Limits of this authorization.

1. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

- 2. This permit does not grant any property rights or exclusive privileges.
- 3. This permit does not authorize any injury to the property or rights of others.
- 4. This permit does not authorize interference with any existing or proposed Federal project.

C. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- 1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- 2. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- 3. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- 4. Design or construction deficiencies associated with the permitted work.
- 5. Damage claims associated with any future modification, suspension, or revocation of this permit.

D. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

E. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- 1. You fail to comply with the terms and conditions of this permit.
- 2. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- 3. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 330.5 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

F. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time.

G. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition H below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

H. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

I. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

012

VENTURA REGULATORY

06/20/00 TUE 13:08 FAX 8056410230

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SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

LAND USE AND COASTAL DEVELOPMENT PERMIT (D900132D)
(NOTICE OF FINAL COUNTY ACTION)



Department of Planning and Building San Luis Obispo County

County Government Center
San Luis Obispo
California 93408
(805) 549-5600

NOTICE OF FINAL COUNTY ACTION

SUBJECT: D900132D / AT&T COMMUNICATIONS

The San Luis Obispo County Planning Commission approved the above-referenced application. Two copies of a Land Use Permit are enclosed. The conditions of approval adopted by the Planning Commission are attached to the Land Use Permit. The conditions of approval must be completed as set forth in this document.

Please sign and return one copy of the Land Use Permit to this office. Your signature will acknowledge your acceptance of all the attached conditions and applicable Land Use Ordinance, Coastal Zone Land Use Ordinance and Building and Construction Ordinance standards.

If you are dissatisfied with any aspect of this approval, you have the right to appeal the decision to the Board of Supervisors. The appeal must be filed within 14 days of the date of the Planning Commission decision using the form provided by the Planning Department. There is no fee for the appeal to the county.

This action is also appealable to the California Coastal Commission pursuant to Coastal Act Section 30603 and County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal, criteria, and procedures that must be followed to appeal this action. We strongly recommend that you contact the county Department of Planning and Building to obtain the appeal form and information handout explaining the rights of appeal.

Exhaustion of appeals at the county is required prior to appealing the matter to the California Coastal Commission. This appeal must be made directly to the California Coastal Commission Office. Contact the Commission's Santa Barbara Office at (805) 963-6871 for further information on appeal procedures.

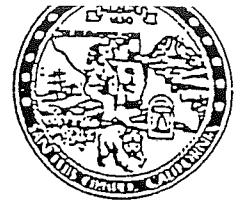
If you have any questions regarding these procedures, please contact me at (805) 546-5600.

Sincerely,

Development Review Section

D-54 [395k/3288k2]
03/31/89

LAND USE AND COASTAL DEVELOPMENT PERMIT



PERMIT NO. D900132D

This Land Use/Coastal Development Permit allows the approved use described below to be established on the site referenced by the Assessor Parcel Number listed below. Any attached conditions of approval must be completed by the applicant as set forth by the condition. In addition to the conditions of approval, the approved use must also satisfy all applicable provisions of the Coastal Zone Land Use Ordinance and the Building and Construction Ordinance.

APPROVAL GRANTED

APPROVED USE:

Approval of fiber optic cable proj. within a typical easement width of app. 30 ft. & typical trench width 24 inches for a distance of app. 10.5 miles

ASSESSOR PARCEL NUMBER(S):

Various

ISSUED TO:

*AT&T Communications of Calif. Inc.
4430 Rosewood Dr. Pm. 3684
Pleasanton, CA. 94588*

CONDITIONS ATTACHED:

YES

NO

FINDINGS ATTACHED:

YES

NO

EFFECTIVE DATE

Unless an appeal is filed, this approval will become effective on December 16, 1991, and will be valid for two years. If an appeal is filed as provided by Section 23.01.042 and 23.01.043 of the Coastal Zone Land Use Ordinance, this approval may be affirmed, affirmed in part, or reversed. After two years the approval will expire and become void unless one of the following occurs:

- a. The project has been completed.
- b. Work has progressed beyond the completion of structural foundations.
- c. A written extension request has been filed with the Planning Department prior to the date of expiration and has been granted.

NOTE: THIS IS NOT A BUILDING PERMIT

Applicant must sign and accept conditions or permit is void.

DEPARTMENT OF PLANNING AND BUILDING VERIFICATION.

[Signature]
Signature Date 12/4/91

BY: *[Signature]* DATE 11/27/91

COUNTY GOVERNMENT CENTER, SAN LUIS OBISPO, CA. 93408 (805) 549-5600

Plot Plan/Site Plan/MUP/Dev. Plan/ Variance - In CZ Appealable



Department of Planning and Building San Luis Obispo County

Alex Hinds, Director
Bryce Tingle, Assistant Director
Barney McCay, Chief Building Official
Norma Salisbury, Administrative Services Officer

Nov 27, 1991

APPLICANT:

SUBJECT: PLANNING COMMISSION APPROVAL RESOLUTION

The County Planning Commission recently approved your application by adopting an official resolution and a copy is enclosed for your records. The Findings and Conditions approved by the Commission are attached to the resolution and referred to as Exhibit A and B.

If you are dissatisfied with any aspect of this approval, you have the right to appeal this decision to the Board of Supervisors up to 14 days after the date of approval, in writing, to the Planning Department. The appeal fee is \$365 and must accompany your appeal letter.

If you have any questions regarding this matter, please contact me at 549-5600.

Sincerely,

DIANE R. TINGLE
SECRETARY
COUNTY PLANNING COMMISSION

PLANNING COMMISSION
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

November 14, 1991

PRESENT: Commissioners Anna Alexander, Shirley Bianchi, Don Keefer, David Oakley, Susan Ostrov, Chairman Ken Schwartz

ABSENT: None

RESOLUTION NO. 91-89
RESOLUTION RELATIVE TO THE GRANTING
OF A DEVELOPMENT PLAN

WHEREAS, The County Planning Commission of the County of San Luis Obispo, State of California, did, on the 14th day of November, 1991, grant a Development Plan to AT&T COMMUNICATIONS OF CALIFORNIA, INC./CLARK WHITTEN-COATES FIELD SERVICE, INC. to allow approval of a fiber optic cable project (onshore and offshore) within a typical easement width of approximately 30 feet and a typical trench width of 24 inches for a distance of approximately 10.5 miles, running from the existing AT&T facility on Los Osos Valley Road near Foothill Boulevard, through an existing easement paralleling Sycamore Canyon and Clark Valley, south of Los Osos, through the northern portion of Montana De Oro, and offshore for a distance of approximately three miles. County File Number: D900132D.

WHEREAS, The Planning Commission, after considering the facts relating to said application, approves this Permit subject to the Findings listed in Exhibit A.

WHEREAS, The Planning Commission, after considering the facts

relating to said application, approves this permit subject to the Conditions listed in Exhibit B.

NOW, THEREFORE, BE IT RESOLVED, That the Planning Commission of the County of San Luis Obispo, State of California, in a regular meeting assembled on the 14th day of November, 1991, does hereby grant the aforesaid Permit, No. D900132D.

If the use authorized by this Permit approval has not been established or if substantial work on the property towards the establishment of the use is not in progress after a period of twenty-four (24) months from the date of this approval or such other time period as may be designated through conditions of approval of this Permit, this approval shall expire and become void unless an extension of time has been granted pursuant to the provisions of Section 22.02.050 of the Land Use Ordinance.

If the use authorized by this Permit approval, once established, is or has been unused, abandoned, discontinued, or has ceased for a period of six months (6) or conditions have not been complied with, such Permit approval shall become void.

On motion of Commissioner Bianchi, seconded by Commissioner Alexander, and on the following roll call vote, to-wit:

AYES: Commissioners Bianchi, Alexander, Keefer, Ostrov,
Oakley, Chairman Schwartz

NOES: None

ABSENT: None

the foregoing resolution is hereby adopted.

/s/ Ken Schwartz
Chairman of the Planning Commission

ATTEST:

/s/ Diane Tingle
Secretary, Planning Commission

EXHIBIT A
FINDINGS

- A. The project approved by this Development Plan is consistent with the San Luis Obispo County Coastal Zone Land Use Element and Inland Land Use Ordinance of the general plan because fiber optic cables are permissible land uses within the Agriculture, Recreation, and Rural Lands land use categories, and related improvements associated with this project are also consistent with the general plan. The parking lot and boardwalk improvements are consistent with overall park use.
- B. As conditioned herein, the proposed project or use satisfies all applicable provisions of Titles 22 and 23 of the County Code.
- C. The establishment and subsequent operation or conduct of the use will not because of the circumstances and conditions applied in the particular case be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project included in this request will include appropriate measures to mitigate any ill-effects associated with development ongoing use and maintenance activities associated with this project.
- D. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its ultimate development because the easement is located in remote rural areas and will restore disturbed areas to the greatest extent feasible.
- E. The improvements for the beach access parking lot and boardwalk approved under this development plan will not in and of themselves generate a volume of traffic beyond the safe capacity of all roads providing access to the project either existing or to be improved with the project because the project is located on Pecho Road which is currently capable of handling the (existing) traffic associated with the project. In addition, the project involves no new facilities which would generate additional traffic, but rather involves the relocation of an existing visitor access area from Army Road to the new area.
- F. The site design and development incorporate adequate measures to ensure that archaeological resources will be acceptably and adequately protected because the applicant will stop work in the event historical resources are discovered.
- G. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the

environmental effects of the project, and on the basis of the expanded initial study and all comments received there is no substantial evidence that the proposed project will have a significant effect on the environment.

H. The project is consistent with the relevant policies of the following chapters in the Coastal Plan Policies Document: Shoreline Access, Recreation and Visitor Serving Facilities, Environmentally Sensitive Habitats, Coastal Watersheds, Visual and Scenic Resources, Hazards, Archaeology, Air Quality; because the project successfully balances the two goals of facilitating public access and preserving the park's environmental resources.

I. The projects approved with this development plan are consistent with the following goals and policies of the ESTERO AREA PLAN: 3. PUBLIC FACILITIES AND SERVICES: RECREATION SERVICES; CHAPTER 4. CIRCULATION - A. ROADS - Pecho Road; B. OTHER TRANSPORTATION MODES - Transit, Bikeways; C. PLANNING AREA CIRCULATION PROGRAMS - Areawide - 4. Scenic Corridors - Pecho Road, South Bay - 3. Trails; CHAPTER 6 LAND USE - Recreation; with the conditions of approval.

J. The proposed beach access improvements are consistent with Coastal Policies of the Local Coastal Plan as replacement vehicular access for the Army Road closure.

K. The portion of the proposed project within the Montana de Oro State Park is consistent with those portions of the Park General Plan applicable to and approved by Development Plan/Coastal Development Permit D900119D

L. The project is consistent with the Local Coastal Plan as it pertains to Sensitive Resource Areas as follows:

(1) The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.

(2) Natural features and topography have been considered in the design and siting of all proposed physical improvements.

(3) Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource.

(4) The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil

erosion, and sedimentation of streams through undue surface runoff.

M. The project is consistent with the Local Coastal Plan as it pertains to Environmentally Sensitive Habitats as follows:

- (1) There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat because although some habitat disruption will occur in the southern portion of the habitat area, a more extensive area in the northern portion of the habitat known as Army Road will be closed to vehicular access and; an extensive habitat restoration project will be made possible.
- (2) The proposed use will not significantly disrupt the environment because although it will involve an access road along the easement route West of Pecho Road and a parking area, vehicular and human disturbance will be controlled, minimizing long term disturbance in this area and; the project will make extensive habitat restoration possible at Army Road and; thereby allow for overall enhancement of the environment in the long term.

EXHIBIT D900132D:B
CONDITIONS OF APPROVAL

Approved Use

1. This approval authorizes trenching and horizontal boring for installation of a fiber optic cable from the County's western jurisdictional boundary easterly for approximately 10.5 miles to the AT&T facility located on Los Osos Valley Road; involving realignment of portions of the easement for the cable; a 50 space parking lot; boardwalk trail over the stabilized dunes to the beach, including continuous fencing and signing of the boardwalk; and habitat restoration and revegetation for all portions of the cable route with environmental monitoring. Project development and ongoing use shall be consistent with those portions of the Park General Plan applicable to and approved by the Master Development Plan/Coastal Development Permit (D900119D). The project shall be consistent with revised plans listed herein as well as the negative declaration/expanded initial study which further defines environmental mitigation measures for the project. For the purposes of administering various aspects of the project the following phases will be followed:

Phase I - Horizontal bore from bore site to ocean including some enlarging of the existing denuded area at the bore site.

Phase II - Trenching from bore site east to Pecho Road with subsequent construction of a roadway, parking lot, boardwalk to the beach, restrooms, fencing, signing program and revegetation program.

Phase III - Trenching and cable placement under Pecho Road, along existing cable route and along a new route along Rim Trail. Also included is the continuation of trenching eastward to the boundary of Montana de Oro Park. This phase also includes a revegetation program.

Phase IV - This Phase includes the Los Osos Creek dry crossing and the area between Phase III and Phase IV; and a revegetation program.

Phase V - Includes the remaining portion of the project east of Los Osos Creek to the AT&T facility on Los Osos Valley Road; and a revegetation program.

Phases I through III shall be followed sequentially. Phases IV and V may proceed simultaneously with Phases I through III, subject to the additional requirements of the conditions listed below.

Socio Economic. Where feasible the applicant shall consider

local hire for construction and environmental mitigations activities authorized in this Development Plan to maximize the employment of local residents where feasible.

Construction Schedule

2. Prior to commencing construction of any of the above phases, the applicant shall submit a construction schedule indicating the construction periods proposed and revegetation schedule.

Mitigation Monitoring

3. Prior to commencing construction of each phase the applicant shall retain a mitigation monitor approved by the Environmental Coordinator. The mitigation monitor shall submit a monitoring Plan to the Environmental Coordinator prior to construction for review and approval.

Staking of Disturbance Areas

4. Prior to commencing construction activities or any clearing in preparation for construction staging, for each phase, the applicant shall stake with lath and flag all areas proposed for disturbance to form construction control lines. Any disturbance outside of these areas shall be prohibited and construction crews shall be so informed.

Clearance and Inspection

5. Prior to commencing construction activities or any clearing in preparation for construction staging, the applicant shall obtain a letter of release from the Environmental Coordinator after field inspection of construction control staking by the Environmental Coordinator, State Parks and the mitigation monitor.

Revised Site Plan

Phase II Area Precise Plans

6. Prior to commencing construction of Phase II the applicant shall submit a set of precise plans to function as a revised site plan (including project detail plans) for all areas included within this Phase (see condition number 1 above). The revised site plan shall be at a scale to show sufficient detail of all aspects of the proposed improvements and shall include but not be limited to the following:
 - (a) A practical Plan and Profile for the road leading from Pecho Road to the Parking Lot.
 - (b) A parking lot detail to show the location of 50 parking spaces, fencing, signing the location of the restrooms and an interior planter area to be used to establish native

plants to make the parking lot more aesthetically pleasing and in keeping with surrounding vegetation. Native vegetation shall be selected in conjunction with State Parks and the County, and shall be established during the revegetation portion of the project, prior to commencing with Phase III. The parking lot shall include bicycle racks to accommodate at least 25 bicycles.

- (c) A site detail (or details) for the boardwalk to the beach showing width, height, anchoring, and length.
- (d) A comprehensive fencing plan to ensure that visitors are contained within the parking lot, road and boardwalk areas and that human intrusion into sensitive habitats is minimized to the greatest extent feasible.
- (e) A comprehensive signing plan coordinated with State Parks, to indicate that hiking is not allowed outside of fenced areas and to ensure that the public understands the sensitive nature of the surrounding habitat.

Phase II Area Overall Site Plan

- 7. Prior to commencing construction activities or any clearing in preparation for construction staging, the applicant shall submit a revised site plan for the area within Phase II the precise alignment of the cable route (realignment).

Ongoing Management of Beach Parking Lot and Boardwalk

- 8. The ongoing management of this area shall be in accordance with the Montana de Oro Park Plan with the additional mitigation measures established in these conditions of approval. If degradation due to human use occurs additional mitigation shall be initiated, including but not limited to gating of the roadway to limit hours of use or possible closure for sufficient periods of time to allow recovery. Annual progress reports shall evaluate the overall condition of this area as required by the conditions of approval for the Master Development Plan/Coastal Development Permit. Evaluation shall be by the Department of Parks and Recreation in conjunction with the county and any other appropriate agencies.

Agency Clearance

- 9. Prior to construction in any Phase, the applicant shall obtain clearance from the following agencies:

- Army Corps of Engineers
- State Lands Commission
- Coastal Commission (for coastal development permit)
- Regional Water Quality Control Board
- State Department of Fish and Game
- State Department of Parks and Recreation.

-California Department of Forestry

If approved by the Director of the Department of Planning and Building and the Environmental Coordinator, the applicant may submit the above clearance letters/ permits for areas immediately effected by their review, corresponding to the Phase in question, subject to State and Federal Laws governing required agency reviews.

Army Road Closure and Habitat Regeneration

10. The beach parking lot and related improvements shall be coordinated with the Army Road rehabilitation program and shall be subject to the State Park General Plan and Coastal Development Permit.

Grading and Drainage Review for Parking Lot

11. Submit grading, drainage and erosion control plans prepared in accordance with requirements of Section 23.05.044 of the County Coastal Land Use Ordinance to the Department of Planning and Building for review and approval prior to any construction activities along the cable route. If so required, review of the plan shall be subject to inspection and checking agreement with the Engineering Department and/or the plan shall be prepared by a registered civil engineer. Grading and Drainage Permits may be phased at the discretion of the Senior Building Official and the Environmental Coordinator. The plans shall provide for the following:

- a. protection of coastal streams and wetlands.
- b. protection of terrestrial habitat.
- c. drainage devices within the beach parking lot shall include traps for petroleum residue.
- d. minimizing removal of vegetation.
- e. maximum feasible erosion control.
- f. maximum feasible control of sedimentation.
- g. all environmental mitigation measures listed in the mitigation measures listed below and as further defined in the negative declaration/expanded initial study.

Archaeological Resource Protection

12. If archaeological resources or human remains are accidentally discovered during construction, County shall be notified, work shall be halted within 50 meters (150 feet) of the find, until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate

mitigation measures (if necessary) shall be formulated and will be outlined within 48 hours of discovery, and will be implemented. If any archaeological evidence is discovered during earthwork, only the area that shows signs of evidence is affected, and construction activities can proceed outside the affected area, subject to monitoring requirements.

Effective Approval Period

13. This development plan/coastal development permit approval is valid for 36 months. Time extensions may be granted if requested by the applicant in accordance with the requirements of the Land Use Ordinance. Should portions of the project not be completed by that time a separate development plan shall be required to obtain approval of the remaining portions of the project.

Environmental Mitigation Measures

14. The applicant shall adhere to and incorporate the following measures into the proposed project. These measures become a part of the project description and therefore become a part of the record of action upon which the environmental determination is based. Any other changes made to the project may require a new environmental determination. The following measures further refine and complement the previously listed conditions and are not to be considered duplicate requirements:

a) MITIGATION MONITORING

Environmental Monitor.

- 1) Prior to commencing any construction or vegetation removal an Environmental Monitor approved by the County shall be hired at the applicant's expense to oversee construction activities and mitigation measure implementation. The monitor shall submit a work program to the Planning and Building Department for review and approval prior to issuance of grading and final land use permits. The work program shall include timing of proposed activities, methods used to monitor activities, criteria for evaluation, and timing of reports to the County Planning and Building Department. The reports shall detail the applicant's compliance with conditions of approval and the mitigation measures outlined in the project Negative Declaration. In the event that filed conditions warrant changes in design, the Environmental Monitor shall have the authority to stop work on the project until the redesign has been reviewed and approved by the Planning and Building Department.
- 2) The County Environmental Monitor shall oversee the entire length of the project. However, the California Department of Parks and Recreation have indicated that they wish to utilize their Environmental Monitor to monitor all construction activities within the limits of Montana de Oro State Park. The county's Environmental Monitor will coordinate monitoring

activities with the state park monitor. Within the state park, the state park monitor will be the principal monitor, and will be responsible for keeping the county Environmental Monitor apprised of compliance with the conditions set forth in this statement. The county monitor will be allowed to observe construction activities within the state park and will be responsible for informing the state park monitor if AT&T is not complying with county conditions. It will be up to the state park monitor to ensure compliance with the county conditions as well as state park conditions within the state park boundary.

b) MITIGATION MEASURES INCLUDED IN THE PROJECT BY AT&T

- 1) General Construction Measures. The applicant has committed to general construction measures as listed in Chapter III of the Onshore portion of the Expanded Initial Study. These construction measures shall be incorporated into the project to provide mitigation to reduce a variety of impacts.

c) SOILS AND EROSION

- 1) Erosion of Cut and Fill Slopes. In order to reduce the potential erosion of cut and fill slopes, the angle of the cut and fill slopes shall be decreased from the standard of 2:1 (horizontal to vertical) to 3:1 west of Pecho Valley Road. This will increase the area of disturbance, but it will decrease erosion prior to revegetation and will also facilitate revegetation.
- 2) Erosion Control East of Pecho Valley Road. Potential increased erosion in the segment underlain by sand east of Pecho Valley road along Rim Trail shall be controlled by providing waterbars at intervals no greater than 200 feet. Providing periodic diversion of runoff from the trail will reduce the rate of erosion now occurring along this segment.
- 3) Erosion Control West of Pecho Valley Road. The potential for increased erosion resulting from an increase in concentrated runoff from the access road shall be mitigated by:
 - (a) Designing, to the satisfaction of the Department of Parks and Recreation, the access road west of Pecho Valley Road to shed runoff as sheet flow; or, 2) collecting runoff from the access road west of Pecho Valley Road and conveying it to canyon bottoms below the active knick points in non-erosive devices, providing energy dissipators at points of release; or 3), collecting runoff from that part of the access road downslope from the two major canyons and conveying it to the parking area where it can infiltrate into the sand, and provision of berms as necessary to retain runoff in the vicinity of the parking area, or conveying all the runoff from the access road to

the parking area.

(b) Applicant shall prepare a detailed Grading and Drainage Plan for the area west of Pecho Valley Road, and submit it to the Department of Planning and Building for joint review and approval by the Environmental Coordinator and the Department of Parks and Recreation prior to commencing with any construction.

6) Creek Crossings. At any creek crossing, the conduits shall be installed when the creek is not flowing and rain is not forecast during the time necessary to complete the crossing.

d) BIOLOGICAL RESOURCES

1) Revegetation Plan. The applicant shall prepare a revegetation plan for all disturbed areas of the project. A qualified botanist acceptable to the county and the Department of Parks and Recreation shall review and make recommendations regarding the revegetation plan before implementation. The revegetation plan shall include the following measures:

2) General Mitigation Measures applying to all routes and improvements.

(a) Any revegetation shall utilize seeds or cuttings collected from adjacent areas.

(b) As practicable, revegetation shall occur within the same vicinity as the vegetation to be removed. If it is not possible to revegetate in the same vicinity, then the revegetation shall occur at designated locations as stipulated in the revegetation plan. Unless specified, eucalyptus and other non-native species need not be replanted, but shall be replaced with native species as specified in the revegetation plan.

(c) Arroyo de la Cruz manzanita, Morro manzanita and coast live oak trees shall be replaced at a ratio of 5:1, with plants established from cuttings or seeds collected from the local population. The revegetation areas for manzanita shall be 1) in cleared areas adjacent to the right of way or within the right of way if it is not to be used for maintenance; or 2), in other areas designated by the Environmental Monitor (such as in areas that have been cleared of eucalyptus, trails to be abandoned or other suitable areas requiring revegetation).

(d) The revegetation plan shall include the following:

-Species to be replanted and source of seeds and plants to be used.

-Location of the revegetation areas

-Timetable for revegetation

-Method of revegetation (such as the size of plants, soil amendments, special techniques needed to ensure successful replanting, etc.).

-Irrigation method where needed

-Method to verify that replanting has been successful

-The standard county procedures for oak tree preservation shall be included

- (e) Prior to commencement of construction activities, the applicant shall be required to clearly mark all of the trees to be removed during construction as well as any trees that will be trimmed. In the case of manzanita, the marking can be accomplished by stringing colored surveyors tape to denote the areas there plants will be affected.
- (f) Any oak trees, or manzanita that are within ten feet of an area to be graded, not including those to be removed, shall be temporarily marked for protection (e.g., flagged with a different color surveyors tape). The purpose of the marking is to act as a reminder to the construction crew that these areas are not to be disturbed during grading. Marking shall be completed prior to commencement of any grading operations within the affected segment of the line (eg. the rim trail).
- (g) During construction, the operation of heavy equipment shall avoid the area within the driplines of oaks. Such equipment shall not be parked under these trees in order to prevent oily residue from leaking into the root zone and to avoid soil compaction in this area.
- (h) All trenching shall take place outside of the dripline and root zone of all oak trees. Remedial measures ensuring the health of these trees (i.e., pruning to eliminated growth stress) shall also be specified in the revegetation plan. If it is not possible to avoid the driplines of oak trees, the tree shall be considered damaged and shall be replaced as required in item #3 above.
- (i) the Environmental Monitor shall record all trees that are impacted by removal, cutting and grading. The monitor will be responsible for monitoring the health of the replanted trees until it is determined that they can survive on their own, a minimum period of five years.
- (j) The width of the disturbance necessary for construction shall be kept to a minimum. It should be noted that the

applicant shall be required to replace all vegetation removed during construction, specifically with a 5:1 replacement of oak trees and manzanita a revegetation with an appropriate mix of native seeds and plants. If the Environmental Monitor deems that the width of the disturbance is excessive, work shall cease until it can be determined what the appropriate width should be. AT&T has indicated that the width of disturbance would no exceed 40 feet at crossings and in areas of difficult terrain, and would average 30 feet along the majority of the line. In areas of sensitive vegetation, it is possible to reduce the width of disturbance to 10 feet depending on terrain conditions.

3) SLO Junction to Clark Valley Road.

- (a) *Stipa pulchra* (purple needle-grass), *Stipa Lepida* (slender needle-grass) seeds shall be included in the revegetation plans for grasslands between SLO junction and Clark Valley Road.
- (b) In areas of coastal scrub and Arroyo de la Cruz manzanita, the route shall follow existing roads or trails as closely as possible to reduce vegetation removal. Revegetation shall be with fast growing herbs and shall include shrubs native to the local coastal scrub community.
- (c) In areas of chaparral, construction shall follow the existing road, and disturb the vegetation along the side as little as possible.
- (d) The new trench shall be realigned downslope from the serpentine outcrop located approximately 0.75 miles west of the SLO junction, and the outcrop shall be left undisturbed. The actual location of the route shall be marked by the applicant, and checked by a qualified botanist prior to construction.

4) Clark Valley Road to Los Osos Creek

- (a) The existing road west of Clark Valley Road shall be followed where feasible to avoid the oaks and shrubs.
- (b) All Morro manzanitas along the route shall be flagged and avoided where possible.

5) Los Osos Creek Crossing

- (a) Creek and riparian vegetation shall be disrupted as little as possible at the Los Osos Creek Crossing. The area disturbed shall be revegetated with plants native to the riparian zone as listed in the revegetation plan. Arroyo

willows should be included.

6) Los Osos Creek Crossing to 0.2 Miles West of the Eastern Boundary of Montana De Oro State Park

- (a) The alignment shall follow the existing open pathway through the oaks. All disturbance would be as far away from the trunks as possible and outside the dripline.
- (b) The line shall be routed upslope from the wet area shown in Figure V-4 of the Onshore portion of the Expanded Initial Study, and modifications to drainage patterns during construction should be avoided.

7) 0.2 Miles West of the Eastern Boundary of Montana De Oro State Park to Hazard Canyon Road

- (a) Where Rim Trail is wide, no brush removal should be required and significant disruption to the root systems can be avoided. Trimming of manzanitas along the side of the trail may be required, but shall be kept to a minimum following proper pruning procedures.
- (b) Since the Rim Trail will be maintained as an access road for maintenance purposes and will require removal of manzanitas and trimming of manzanitas, maintenance will result in a long term loss of coverage. In order to mitigate this long term loss, particularly canopy loss, the applicant shall remove an area of eucalyptus canopy equal to the area of Morro manzanita canopy that will be required to continue the maintenance of the road. To determine the area of eucalyptus canopy to be removed, the applicant, in the revegetation plan, will map the total area of Morro manzanita to be removed on the Rim Trail and equate this removal to square feet of total coverage. This will allow field verification of the exact area of manzanita canopy that can be equated to eucalyptus canopy to be removed.
- (c) The State Department of Parks and Recreation has identified certain stands of non-plantation eucalyptus in natural habitat area near the proposed line that should be removed in order to provide additional habitat for Morro manzanita. For example, there are areas just east of Pecho Valley Road where Eucalyptus trees could be removed and Morro manzanita reestablished. These areas are clearly good habitat for manzanita as shown by the maritime chaparral in the fringe areas around the grove and scattered in the understory of the grove.
- (d) Once the area of manzanita canopy removal has been determined, the areas of eucalyptus canopy to be removed shall be determined after consultation with the Department of Parks and Recreation. Where the eucalyptus stand to be

removed, is greater than the amount of manzanita calculated for removal, the entire stand should be removed if the majority of canopy is designated for removal.

- (e) The location of the eucalyptus stand and the amount of canopy to be removed shall be included as part of the revegetation plan, and the area of canopy of eucalyptus to manzanita removal can be adjusted during construction with approval of the Environmental Monitor. The eucalyptus removal shall occur during or immediately after construction of the Rim Trail portion of the line.
- (f) Once eucalyptus removal has occurred the applicant may utilize this area for revegetation with manzanita. This manzanita can be with those plantings required in the 5:1 replacement of manzanita removed in the project right of way.
- (g) The alignment shall be routed outside the wetland area, and modifications to drainage patterns during construction should be avoided. If modifications to drainage patterns during construction cannot be avoided, the Environmental Monitor shall be informed prior to any alterations to drainage. The Environmental Monitor shall determine, in consultation with State Parks and Recreation and any necessary specialists, if the proposed alterations are necessary, and appropriate mitigation shall be determined at that time.

8) Hazard Canyon Road to Pecho Valley Road

- (a) Morro manzanitas in this area shall be replaced with plants established from cuttings or seeds collected from the local population. Other plants used in the revegetation should include shrubs and herbs native to the local chaparral community.

9) Pecho Valley Road to the Parking Area

- (a) The State Department of Parks and Recreation is proposing to restrict vehicle access to their portion of Army Road. The applicant shall be required to prepare a restoration plan for Army Road within the park. This plan will be prepared in consultation with a biologist with expertise in Morro Bay kangaroo rat habitats. The plan shall be reviewed by the State Department of Parks and Recreation and the U.S. Fish and Wildlife Service and shall be approved by the Environmental Coordinator's Office. The plan shall include the following:
- (b) Area within the park to be affected by the restoration plan shall be equal to the area disturbed by AT&T activities.

- (c) The plan shall include fencing of the State Parks boundary in the vicinity of Army Road.
- (d) Remnants of road base along "A" Road and Army Road on State Park property shall be removed and transported to the future parking lot at the proposed boring site. This activity can be implemented after completion of the offshore boring and cable installation or at the time of construction of the parking lot.
- (e) Any remaining compacted road areas within the park shall be ripped and contoured so that these areas can be revegetated.
- (f) The plan shall include a revegetation plan for the road areas within the park to be affected and, where appropriate, an exotic plant removal plan such that the road areas can be returned to natural habitat.
- (g) Areas of cut and fill shall be revegetation as soon as feasible after construction of the access road within the park. Revegetation shall include plants native and indigenous to the local area. A qualified botanist shall review and make recommendations regarding the revegetation mix before implementation.
- (h) All Morro manzanitas and dune almonds removed shall be replaced at a ratio of 5:1 with plants established from cuttings or seeds collected from the local population. Other plants used in the revegetation shall include shrubs and herbs native to the local chaparral/coastal dune scrub community. A qualified botanist shall review and make recommendations regarding the revegetation mix before implementation. No introduced species shall be included.
- (i) The access road shall be constructed to its full width as part of the proposed project to avoid recurrence of impacts at such time as the road were to be widened.
- (j) Banded Dune Snail. Prior to construction of the segment of the project within 1,000 feet of the parking area (boring site), the limits of disturbance in this segment should be staked and flagged by the applicant, and this area should be re-surveyed for the presence of banded dune snails. Should any banded dune snails be found in this area, they should be removed and placed in suitable habitat west of the project area.
- (k) Morro Blue Butterfly. The long-term loss of Morro blue butterfly habitat can be mitigated by closing the Army Road. Revegetation of areas within this portion of the project shall include silver beach lupine in the revegetation plan. Short-term losses of habitat in areas of cut and fill can be mitigated by including silver beach

lupine in the revegetation of these slopes.

e) ARCHAEOLOGICAL RESOURCES

- 1) Pre-construction meeting. A pre-construction meeting shall be conducted by a qualified archaeologist to advise the construction crew of conditions to be aware of that may indicate the presence of a significant archaeological site.
- 2) CA-SLO-798. CA-SLO-798 shall be avoided by re-routing the alignment along one of several alternatives. Alternative C (one of three alternative routes to avoid the site) as shown on Figure 1 of the archaeological report contained in the file, shall be the preferred route.
- 3) A qualified archeologist and Native American observer shall be present to monitor construction in Sensitive area 1 as designated in the confidential archaeological report available with the Office of Environmental Coordinator to mitigate potential impacts to CA-SLO-787.

f) VISUAL RESOURCES

- 1) Cable realignment. Significant adverse visual effects resulting from trenching throughout the Morro manzanita shall be minimized by moving the cable crossing approximately 50 feet northeast and following the marked horse trail shown on the Expanded Initial Study Figure V-8, bottom and Figure IV-6.