

CALENDAR ITEM

C53

A 33

04/06/11
WP 8278.1, PRC 8143.1
S. Young

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CONSIDER TERMINATION OF A GENERAL LEASE - NON-EXCLUSIVE RIGHT OF WAY USE AND ISSUANCE OF A NEW GENERAL LEASE - NON EXCLUSIVE RIGHT OF WAY USE

LESSEE/APPLICANT:

AT&T Corp.
One AT&T Way, Room 3D 151 F
Bedminster, N. Y. 07921

AREA, LAND TYPE, AND LOCATION:

Sovereign lands in the Pacific Ocean, offshore of the city of Morro Bay, San Luis Obispo County

AUTHORIZED USE:

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.

LEASE TERM:

15 years, beginning April 20, 2011.

CONSIDERATION:

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

SPECIFIC LEASE PROVISIONS:

Insurance:

No less than \$1,000,000 combined single limit coverage.

Bond:

\$500,000.

OTHER PERTINENT INFORMATION:

1. Applicant has the right to use the uplands adjoining the lease premises.

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2. On February 8, 2000, the Commission authorized the issuance of three General Leases – Non-Exclusive Right-of-Way Use to MFS Globenet for construction, installation, operation, and maintenance of three six-inch-diameter (empty) steel conduits that were intended to accommodate future fiber optic cable installations. One of those empty conduits is identified under Lease No. PRC 8143.1. This conduit is located offshore of Montaña de Oro State Park. Through a series of assignments, the Lease came to be held by AT&T Corp.
3. On April 24, 2001, the Commission authorized the issuance of a separate lease (PRC No. 8278.1) for the installation, use, and maintenance of the China US E1 Fiber Optic Cable to be installed in the existing conduit covered by Lease No. PRC 8143.1.
4. Lease PRC 8143.1 (conduit) expired on February 7, 2010. Lease PRC 8278.1 (Fiber Optic Cable) expires April 19, 2011. Both of the original leases contained a provision for a right to renew the leases for one additional period of 15 years, subject to such reasonable terms and conditions as the State may impose. AT&T is now applying to terminate lease PRC 8143.1 and include the existing conduit with the new existing fiber optic cable in a new lease (No. PRC 8278.1).
5. Lease No. PRC 8278.1 was amended in 2007 to provide for modification of the cable burial verification survey schedule from an 18-24 month interval to a five-year inspection interval. Similar permit conditions exist with the project's California Coastal Commission (CCC) Coastal Development Permit (CDP).

In 2003 and 2005, AT&T conducted cable burial surveys which indicated the cable burial status had not appreciably changed between the 2003 and 2005 surveys nor since the cables were installed in 2001. The survey reports indicated there was no evidence of cable interaction with fishing gear or with marine mammals. The 2010 survey has been completed and reports were submitted simultaneously by AT&T Corp. to the Commission and the CCC. The Periodic Cable Verification Survey Report (Report) for China-US Cable System Segment E-Morro Bay dated November 2010 indicates that .037 Kilometer of cable is exposed and that mitigation to exposed or unsupported cable is precluded by bottom substrate composition and natural bathymetry obstacles. Based on the 2010 alignment charts, the Report concludes that the depth of burial trend documented in 2010 is in overall agreement with the 2003 and 2005 survey data previously obtained over this cable. The China – US Cable System Segment E, within the limits of the survey, remains principally in

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the same condition found during the 2005 Periodic Burial Verification Survey.

6. **Termination of Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of CEQA because it is not a "Project" as defined by CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21054 and Title 14, California Code of Regulations, sections 15060(c)(3) and 15378.

7. **Issuance of New Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the State has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities: Title 2, California Code of Regulations, section 2905(a)(2).

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

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

EXHIBITS:

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

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

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CEQA FINDING:

Termination of Lease: Find that the activity is not subject to the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15060(c)(3) because the activity is not a project as defined by Public Resources Code section 21065 and Title 14, California Code of Regulations, section 15378.

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

SIGNIFICANT LANDS INVENTORY FINDING:

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

AUTHORIZATION:

Authorize the Termination of General Lease – Non-Exclusive Right-of-Way Use, Lease No. PRC 8143.1, for the use and maintenance of one existing six-inch diameter steel conduit, issued to AT&T Corp., effective April 06, 2011.

Authorize Issuance of a General Lease – Non-Exclusive Right of Way Use, Lease No. PRC 8278.1 to AT&T Corp. beginning April 20, 2011, for a term of 15 years, for the continued use and maintenance of one steel conduit and one fiber optic cable as shown on Exhibit A and as six-inch diameter described on Exhibit B attached and by this reference made a part hereof; consideration in the amount \$150,843 per year with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; liability insurance for combined single limit coverage of not less than \$1,000,000; surety bond in the amount of \$500,000.