

**STAFF REPORT
C52**

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08/17/17
PRC 8152.1
S. Avila

AMENDMENT OF LEASE

LESSEE:

PC Landing Corp., a wholly-owned subsidiary of NTT Communications Corporation

AREA, LAND TYPE, AND LOCATION:

11 acres, more or less, of sovereign land in the Pacific Ocean, offshore of the city of Grover Beach, San Luis Obispo County.

AUTHORIZED USE:

Use and maintenance of two 5.25-inch-diameter steel conduits and two fiber optic cables.

LEASE TERM:

15 years, beginning April 20, 2010.

CONSIDERATION:

\$274,822 per year; subject to modification by Lessor as specified in Paragraph 2(b) of Section 4 – General Provisions.

PROPOSED AMENDMENT:

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

In the absence of a qualifying event that would trigger a cable burial inspection survey as described herein, on or before the lease anniversary date in 2020 and 2024, the Lessee shall submit a written statement to the Lessor's Executive Officer and to the California Coastal Commission (CCC) confirming that no qualifying event has occurred since the prior burial inspection survey and that no other conditions or changes have occurred that would be expected to affect the burial status of the segments of the cable that were documented as buried in the post-lay survey and subsequent burial inspection surveys.

A "qualifying event" that will trigger a burial inspection survey for the purposes of this lease is defined as: an incident or activity (such as a gear

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snag), the circumstances of which indicate the likelihood that the previously buried cable has become unburied; or an act of God, such as a severe earthquake in the vicinity of the cables that could cause deformation of the sea floor or underwater landslides, or any other significant event that could cause excessive ocean floor scouring. Lessee shall notify Lessor in writing within 10 days of a qualifying event, and shall commence a burial inspection survey at the soonest available opportunity, subject to vessel availability, weather conditions, and related operational conditions affecting the survey.

The burial inspection survey shall be conducted with a Remotely Operated Vehicle (ROV) equipped with video capable of producing still images and by a third party agreed to by the permitting agencies. The survey, along with a narrative report describing the results, including the location(s) of any segments of unburied cable and the depth of burial for the remaining cable segments, shall be submitted to the Lessor and the CCC within 30 days of survey completion. Within 30 days of the submission of the survey report, the cable owner must submit a plan for approval by Lessor's staff for reburying any segments that may have become unburied. Such plan shall include a proposed schedule for completion of the necessary work, including gear retrieval if such action is feasible and safe.

All other terms and conditions of the lease shall remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, and 6501.1; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On October 29, 2010, the Commission authorized a General Lease – Non-Exclusive Right-of-Way Use, to PC Landing Corp., a wholly-owned subsidiary of NTT Communications Corporation for a term of 15 years, beginning April 20, 2010 ([Item C48, October 29, 2010](#)) for the use and maintenance of two 5.25-inch-diameter steel conduits and two fiber optic cables. The fiber optic cables are used to carry diverse digital communications traffic including voice, data, and video for the regional population. The lease will expire on April 19, 2025.

The Applicant is now applying for a lease amendment to modify the requirement to conduct burial inspection surveys of the ocean floor every 5 years in the lease area. The survey requirement is intended to identify

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whether the conduit has become unburied and could become a snag hazard for commercial trawling operations. The provision was included in the lease to satisfy the concerns of commercial fishermen that operated bottom trawling vessels in the lease area at the time of lease inception. The last survey was conducted in August 2015 and found no evidence that the conduit has become unburied nor that any fishing gear had become snagged on it. At this time, virtually no commercial bottom trawling occurs in the lease area, nor is any anticipated during the remaining lease term, so there is little if any risk of entanglement even if the conduit becomes exposed. The commercial fishermen that continue to operate in the lease area using other capture means are negatively impacted by the surveys, as they are required to remove fishing equipment prior to each survey, and must remain clear of the area while vessels are conducting the surveys. In a letter dated June 29, 2016, the Central California Joint Cable/Fisheries Liaison Committee stated its support of the removal of the 5-year cable burial verification survey from Commission lease terms. The proposed amendment enhances Public Trust uses by modifying a requirement that now hinders commercial fishing in the area, rather than enhancing it.

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

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

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

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OTHER PERTINENT INFORMATION:

1. On December 9, 2016, the CCC approved an amendment to the coastal development permit (CDP No. E-98-027-A4/CC-041-00) for the PC Landing fiber optic cables. The lease amendment described in this action is consistent with the CDP amendment.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. The subject lease amendment to modify the routine burial verification provision is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Central California Joint Cable/Fisheries Liaison Committee Letter dated June 29, 2016

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

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

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 8152.1, effective August 17, 2017, to replace the current cable burial inspection survey schedule and terms in Lease Section 2 "Special Provisions," Paragraph 11 with new terms as described herein.

EXHIBIT A

PRC 8152.1

LAND DESCRIPTION

Two parcels of tide and submerged land in the bed of the Pacific Ocean adjacent to Pismo State Beach, San Luis Obispo County, State of California, and more particularly described as follows:

Parcel 1 (Cable Route PC-1 East):

A ten foot (3.048 meter) wide strip of land lying 5 feet (1.524 meters) on each side of the following described centerline:

COMMENCING at point located in the Pismo Grant, having a Latitude 35° 08' 34.15204" North and a Longitude 120° 38' 16.69987" West, said point being a 3-5/8 inch brass disk stamped PELLETT 1974, set in the top of a 14 inch concrete cylinder projecting 6 inches above the ground; thence South 13° 55' 32" East 2282.25 meters to the POINT OF BEGINNING; thence South 79° 31' 28" West 275.19 meters; thence South 79° 48' 42" West 1166.23 meters; thence North 87° 55' 46" West 108.38 meters; thence South 83° 03' 53" West 359.24 meters; thence South 76° 10' 53" West 203.86 meters; thence South 65° 41' 17" West 933.26 meters; thence South 76° 31' 19" West 1930.17 meters; thence South 88° 25' 22" West 43.16 meters; thence South 75° 52' 16" West 617.72 meters; thence South 76° 41' 26" West 2460.17 meters more or less to a point on the State of California Offshore Boundary, said point being the POINT OF TERMINATION.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

Sidelines of said strip shall be extended or shortened to intersect with said ordinary high water mark and State of California Offshore Boundary.

Parcel 2 (Cable Route PC-1 South):

A ten foot (3.048 meter) wide strip of land lying 5 feet (1.524 meters) on each side of the following described centerline:

COMMENCING at point located in the Pismo Grant, having a Latitude 35° 08' 34.15204" North and a Longitude 120° 38' 16.69987" West, said point being a 3-

5/8 inch brass disk stamped PELLETT 1974, set in the top of a 14 inch concrete cylinder projecting 6 inches above the ground; thence South 13° 55' 32" East 2282.25 meters to the POINT OF BEGINNING; thence South 76°31'31" West 274.84 meters; thence South 76° 49' 05" West 1136.22 meters; thence South 77° 41' 59" West 537.51 meters; thence South 81° 04' 28" West 46.29 meters; thence South 67° 27' 41" West 282.43 meters; thence South 64° 42' 45" West 52.87 meters; thence South 67° 55' 19" West 382.95 meters; thence South 59° 34' 55" West 76.50 meters; thence South 67° 16' 21" West 60.87 meters; thence South 72° 18' 55" West 265.56 meters; thence South 74° 28' 01" West 2116.71 meters; thence South 74° 43' 39" West 1309.02 meters; thence South 75° 11' 55" West 186.43 meters; thence South 79° 10' 56" West 69.49 meters; thence South 73° 37' 06" West 424.13 meters; thence South 74° 29' 19" West 577.44 meters more or less to a point on the State of California Offshore Boundary, said point being the POINT OF TERMINATION.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

Sidelines of said strip shall be extended or shortened to intersect with said ordinary high water mark and State of California Offshore Boundary

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

Positional information for Land Description is based on "PC-1 East As-found RPL_IDR July 3, 2003, Issue 1" and "PC-1 South As-found RPL_IDR July 3, 2003, Issue 1" provided by Alda Marine, a partnership of Alcatel Submarine Networks and Louis Dreyfus Armateurs.

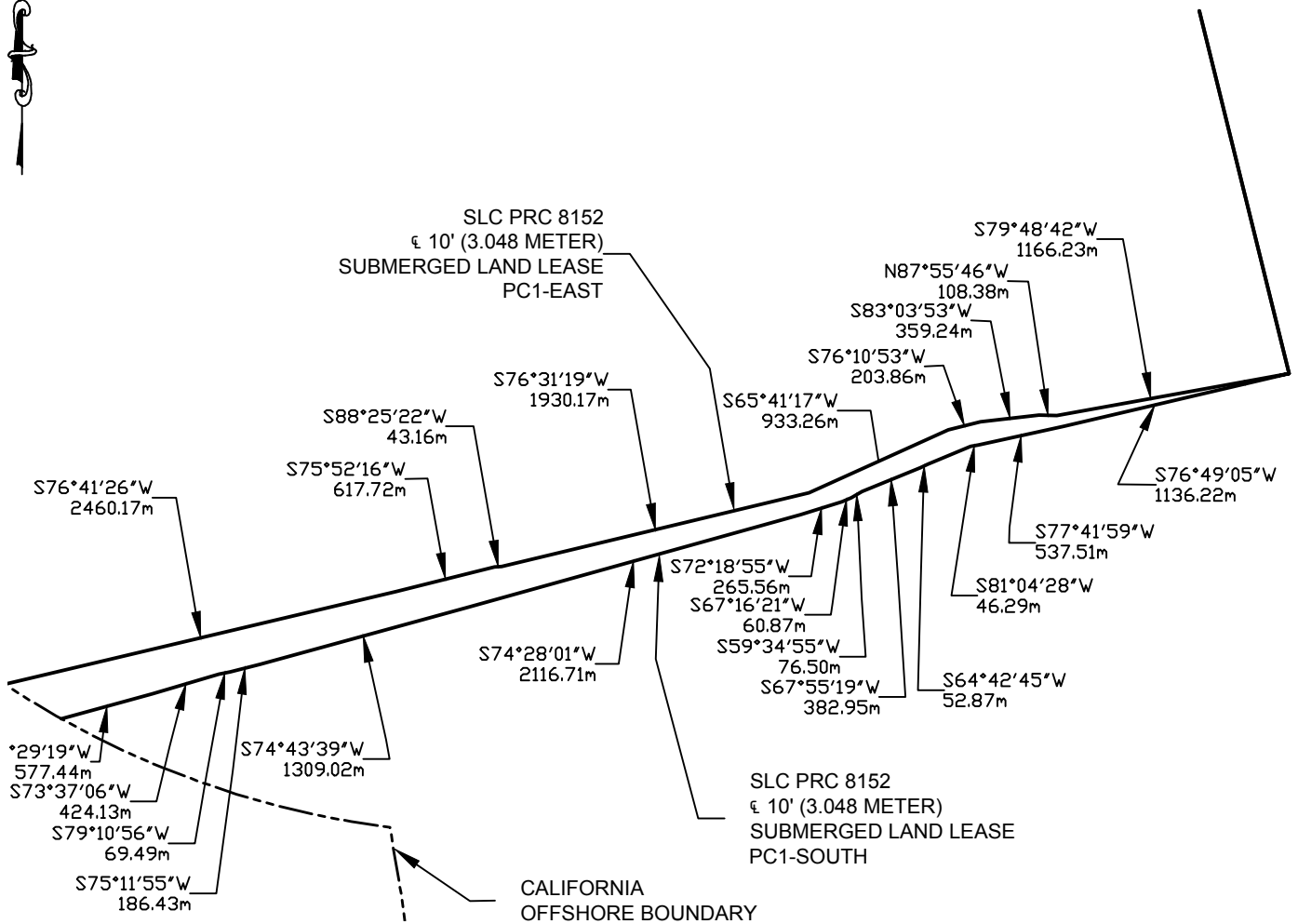
END OF DESCRIPTION

Prepared by the California State Lands Commission Boundary Staff 8/3/09.



NO SCALE

SITE



TWO STEEL CONDUITS AND TWO FIBER OPTIC CABLES OFFSHORE FROM GROVER BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 8152.1
 PC LANDING CORP.
 GENERAL LEASE -
 NON-EXCLUSIVE
 RIGHT OF WAY USE
 SAN LUIS OBISPO CO.



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

EXHIBIT C

PRC 8152.1



Central California Joint Cable/Fisheries Liaison Committee

525 Harbor Street, Post Office Box 2033, Morro Bay, California 93443
Phone: (805) 771 - 9637 | Mobile: (805) 441 - 4838 | www.cencalcablefishery.com
Robert Seitz, Chairman of the Board | Christopher Kubiak, Liaison Officer

June 29, 2016

VIA U.S. MAIL

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, California 95825

RE: Requirement for Routine Undersea-Cable Burial Inspection Surveys

Dear Ken Foster,

I am writing on behalf of the Central California Joint Cable/Fisheries Liaison Committee (the "Committee"). The purpose of this letter is to inform the California State Lands Commission (the "CSLC") of the Committee's Resolution in support of removing the existing lease requirement to conduct routine undersea cable burial verification surveys on a five-year interval, and to replace this with a requirement to survey the cables after a significant event occurs. In addition, the letter will provide some background information on the Committee and the routine burial inspection survey requirement in order to insure full understanding of the Committee's Resolution.

Organized in 1999, the Committee is the principal California non-profit trade association for Submarine Cable Owners and the Commercial Fishing Industry. The Committee's represented member Cable Companies are AT&T Corporation, MFS Globenet (Verizon), X2 Telecom, LLC (Integra), PC Landing Corp, and PAC Landing Corp (Level 3). The fishing industry is two-fold and refers to active members of the Central California commercial fishing industry who operate in the coastal waters of the "Covered Area" described in the Agreement Between Cable Companies and Fishermen dated January 30, 2002 (the "Agreement"). The two components of the fishing industry are commercial *trawl* fishermen, and, two-fishing Associations, the Morro Bay Commercial Fisherman's Organization and Port San Luis Commercial Fisherman's Association. Ostensibly, the cable companies, trawl fishing industry, and associations have conflicting business interests. With the cooperation of the fishing and cable industries, the Committee has sought to open communication between the industries so that they could achieve their common business purpose of doing business in the same geographical area with the least potential conflict. As such, the Committee serves as a forum and advocacy organization for its members' interests.

The Committee's purpose is to assist the members of both industries in dealing with mutual business situations. In the context of these purposes, the Committee's Directors and Officers have established policies and procedures to facilitate inter-industry communication, coordination, and cooperation, all with the goal of improving the business conditions of such cable and fishing industries, and the furtherance of their common business interests. These policies and procedures include development of best practices for both industries to minimize the possibility of the undersea cables experiencing external aggression events, and to minimize disruption of fishing operations.

CENTRAL CALIFORNIA JOINT CABLE/FISHERIES LIAISON COMMITTEE

California State Lands Commission

June 29, 2016

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Following the initial cable installation(s), the Committee supported, and the CSLC required, cable burial inspection surveys conducted every eighteen to twenty four months. The cable projects of AT&T Corporation, MFS Globenet (Verizon), PC Landing Corp, and PAC Landing Corp. (Level 3) were inspected for burial verification in 2001, 2003, and 2005. In 2005 and 2007, each of the member cable companies applied for, and the Committee supported, lease amendments to extend the burial inspection surveys from the eighteen to twenty four month interval to a five-year interval. The completed burial inspection surveys indicated the cable status had not appreciably changed between the 2003 and 2005 surveys nor since the cables were installed in 2000/2001. The survey reports indicated there was no evidence of cable interaction with fishing gear or with marine mammals. The CSLC approved all of the requested amendments and the cables were surveyed in 2010 and 2015 with the same result; the cable status had not appreciably changed.

As we have stated in the past, we generally believe that the burial verification surveys have become a costly and disruptive nuisance to both fishing and cable interests, without any countervailing benefit. Accordingly, we fully support any permit amendment requests that you may receive from AT&T Corporation, MFS Globenet (Verizon), PC Landing Corp, and PAC Landing Corp (Level 3), to remove the requirement to conduct five-year cable burial verification surveys on cables covered under the terms of our Agreement.

A final note regarding the cable project of X2 Telecom, LLC. This project was installed as part of the now defunct Global West Network on or about year 2001. The cable was then effectively abandoned until X2 acquired the system last year. As such, this cable has not been surveyed and we cannot determine the burial status and the need to conduct subsequent surveys at a specified interval. We will discuss this matter with X2 and address the survey requirement when we have the relevant information.

We are also copying the California Coastal Commission with this letter to notice them of our Resolution of support.

Please do not hesitate to contact me if you need any further information about this matter.

Office: (805) 771-9637 Mobile: (805) 441-4838 Email fisherfish@sbcglobal.net

Sincerely,



Christopher Kubiak, Secretary/Liaison Officer
Central California Joint Cable/Fisheries Liaison Committee

cc: Kate Hucklebridge, California Coastal Commission