

F 5a

**ADDENDUM TO COMMISSION PACKET
FOR
ENERGY, OCEAN RESOURCES, and
FEDERAL CONSISTENCY**

For Friday, March 13, 2009

Item No. F 5a

E-08-021 / CC-005-09

AT&T Corporation

■ Staff Modifications

CALIFORNIA COASTAL COMMISSION

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March 5, 2009

To: Coastal Commissioners and Interested Parties

From: Alison Dettmer, Deputy Director
Larry Simon, Federal Consistency Coordinator

Subject: **Addendum to Item F 5a on the March 13, 2009, Commission Agenda**

The following are proposed minor edits and corrections to the staff report for coastal development permit application E-08-021 and consistency certification CC-005-09 (AT&T Asia America Gateway fiber optic cable project). The changes are illustrated by ~~strike-throughs for deletions~~ and underlining for additions.

Page 2, Project Description:

. . . the cable will be buried under the seafloor to a depth of approximately ~~4-3~~ 3.3 feet . . .

Page 7, Special Condition 10, second paragraph, line 18:

. . . order remains in effect. The monitor(s) shall immediately notify the regulatory agencies if any take of a marine mammal or sea turtle occurs. At least 10 days . . .

Page 8, Special Condition 11:

. . . (ii) any wildlife behavioral changes ~~that may have been attributable to project operations during project operations~~ . . .

Page 20, paragraph 3:

Heezen's (1957) study consisted of a search of all available cable failure records of four cable companies; the record is only considered complete for those companies for the years 1930-1955. The scope of the study was somewhat limited by the fact that, prior to 1930, cable failure reports generally lacked detail or were incomplete. ~~Current knowledge of whale entanglements is further limited by the lack of any contemporary and comparable analysis of this topic since these studies.~~ Moreover, since many cables have been abandoned since first laid, and since the only basis for discovering entanglement is interruptions to service, ~~which it~~ it is not possible to assess

for abandoned cables, ~~and since no examination of failure rates for operational cables worldwide has been made since 1957, the present rate of whale entanglement is unknown. Interpretation of entanglement risk amounts to speculation, but e~~ Entanglement risk may be affected by these factors: oceanic depth of the cables; burial depth of the cables; presence of suspended cables over submarine trenches or rocky substrates; and the relative tautness of unburied cables (more specifically, shallow, unburied, looped or suspended cables pose more of a hazard than deeply buried cables).

In the October 2008 *IEEE Journal of Oceanic Engineering*, Wood and Carter published the results of a new evaluation of two substantial fault databases to determine the occurrence of whale entanglements with telecommunication cables since the 1955-1966 time period. Wood and Carter discuss the 14 cable faults occurring between 1877 and 1955 attributed to whales in Heezen's 1957 study, and they cite a 1969 study of the Alaska-mainland USA telegraph system which reported two whale entanglements prior to 1966. Wood and Carter state that both of the aforementioned studies "continue to be cited as examples of the potential threat posed to whales by submarine cables although there is a suggestion, unsupported by definitive data, that entanglements may not have occurred since 1955-1966." Wood and Carter's 2008 report concluded that:

Before 1955-1966, up to 16 faults in submarine telegraphic cables were reported and attributed to entanglements with mainly sperm whales. Circumstantial evidence suggests that capture was related to excessive slack in repaired cables laid in areas of rough and/or steep topography. Since 1955-1966, substantial fault data sets contain no reference to whale entanglements. This cessation and its continuation to the present day is largely related to marked changes in submarine cable design, deployment, and maintenance as well as advances in marine surveying. The period from 1955 to 1966 marked the phased replacement of submarine telegraphic cables by coaxial types, which were superseded by fiber-optic systems in the 1980s. Cables of the posttelegraphic era have different torsional and flexile characteristics, are laid with just enough slack to follow the seabed topography, and are commonly buried below the seabed on the continental shelf and upper continental slope – the main sounding habitat of sperm whales. Furthermore, precision marine surveys allow for accurate cable placement to avoid areas where potential ensnaring suspensions may result.

Page 22, paragraph 2, line 16:

. . . order remains in effect. The monitor(s) shall immediately notify the regulatory agencies if any take of a marine mammal or sea turtle occurs. The monitors will also . . .

Page 22, paragraph 3, line 6:

. . . (ii) any wildlife behavioral changes ~~that may have been attributable to project operations during project operations~~ . . .

P. 54, Appendix B, Coastal Development Permit Application and Federal Consistency Certification Materials:

AT&T Corporation, ICF Jones & Stokes, and Marine Mammal Consulting Group, *Draft Marine Wildlife Contingency Plan for AT&T Asia-America Gateway Project*, February 2009.

P. 54, Appendix B, Published Articles and Reports:

Wood, M.P. and Carter, L. "Whale Entanglements with Submarine Communication Cables." IEEE Journal of Oceanic Engineering, Vol. 33, No. 4, October 2008.

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F 5a

Coastal Development Permit No.: **E-08-021**
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Consistency Certification No.: **CC-005-09**
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3 Months: 5/18/2009
6 Months: 8/18/2009

Staff: AD/LS - SF
Hearing Date: March 13, 2009

STAFF REPORT: COASTAL DEVELOPMENT PERMIT APPLICATION AND CONSISTENCY CERTIFICATION

CDP Application No.: E-08-021

Consistency Certification No.: CC-005-09

Applicant: AT&T Corporation

Location: State and federal waters offshore of San Luis Obispo County to the edge of the continental shelf; the Sandspit Beach parking lot at Montana de Oro State Park; and an existing underground fiber optic cable conduit and manhole system extending from the Sandspit Beach parking lot eastward approximately 10.5 miles to the AT&T cable station southwest of San Luis Obispo (**Exhibits 1 and 2**).

Project Description: Install and operate two terrestrial fiber optic and power cables within an existing underground conduit extending from a cable station 1.8 miles inland of the coastal zone boundary at Los Osos Valley Road, westward through Montana de Oro State Park to an existing cable landing manhole in the Sandspit Beach parking lot. Here a combined fiber/power marine cable will be installed through an existing conduit to a point 0.8 miles offshore. From this location, the cable will be buried under the seafloor to a depth of approximately 1.3 feet (except in hard-bottom areas) out to the edge of the continental shelf, 50 miles offshore at a water depth of 6,000 feet.

Substantive File Documents: Appendix B

SYNOPSIS

AT&T proposes to install and operate one marine fiber optic cable extending from Hawaii and landing at Montana de Oro State Park, west-southwest of the City of Los Osos in San Luis Obispo County. AT&T proposes to bury the cable to a target depth of 3.3 feet (unless precluded by seafloor substrates) within State and federal waters from the edge of the continental shelf, approximately 50 miles offshore at a water depth of 6,000 feet, to an existing cable conduit terminus at a point 0.8 miles offshore. The cable would then be pulled to the existing cable landing manhole in the Sandspit Beach parking lot at Montana de Oro State Park. From this location the cable would be installed into an existing underground conduit and manhole system that extends eastward 10.5 miles to the existing AT&T cable station southwest of San Luis Obispo. The portion of the project lying within the Coastal Commission's retained permit jurisdiction, and which is the subject of coastal development permit application E-08-021, is the installation of the fiber optic cable into that portion of the existing buried conduit between the mean high tide line and the conduit terminus 0.8 miles offshore, and the burial of the cable from the conduit terminus to the territorial extent of California state waters approximately three nautical miles offshore.

The project also requires a federal permit from the U.S. Army Corps of Engineers and therefore requires submittal by AT&T of a consistency certification pursuant to Section 307(c)(3)(A) of the Coastal Zone Management Act. For the portion of the project that lies within State waters, the consistency certification is redundant; the coastal development permit serves as a consistency certification. However, for that portion of the project that lies outside the coastal zone, in federal waters out to the edge of the continental shelf and inland of the mean high tide line to the existing AT&T cable station, the applicant submitted consistency certification CC-005-09 to the Commission. In that submittal, AT&T certified that the proposed activity complies with the approved California Coastal Management Program (CCMP) and will be conducted in a manner consistent with the CCMP. This staff report is a combined coastal development permit and consistency certification.

Major Coastal Act issues associated with this project include potential impacts to marine resources, commercial fishing, and public access and recreation. AT&T has committed in its consistency certification to implement the proposed mitigation measures (conditions of permit approval) for the portion of the cable project constructed in federal waters.

Commission staff recommends **approval** of coastal development permit application E-08-021, as conditioned, and **concurrence** with consistency certification CC-005-09.

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1.0 STAFF RECOMMENDATION

1.1 Approval with Conditions

The staff recommends conditional approval of Coastal Development Permit Application No. E-08-021.

Motion:

I move that the Commission approve Coastal Development Permit Application No. E-08-021 subject to the conditions set forth in the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves coastal development permit E-08-021 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

1.2 Concurrence

The staff recommends the Coastal Commission adopt the following resolution:

Motion:

I move that the Commission concur with consistency certification CC-005-09 that the project described therein is consistent with the enforceable policies of the California Coastal Management Program (CCMP).

Staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence in the certification and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution:

The Commission hereby concurs in the consistency certification by AT&T Corporation on the grounds that the project described therein is consistent with the enforceable policies of the CCMP.

2.0 STANDARD CONDITIONS See Appendix A**3.0 SPECIAL CONDITIONS**

This permit is granted subject to the following special conditions:

1. **Indemnification.** In addition to any immunities provided for by law, in exercising this permit, AT&T agrees to hold harmless and indemnify the Coastal Commission, its officers, employees, agents, successors and assigns from any claims, demands, costs, expenses and liabilities for any damage to public or private properties or personal injury that may result directly or indirectly from the project.
2. **Liability for Costs and Attorneys Fees.** AT&T shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than AT&T against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
3. **Cable Burial Depth.** The 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, AT&T shall bury the cables to the maximum depth feasible.
4. **Avoid and Eliminate Cable Suspensions.** To address portions of the route where cable burial is infeasible due to seafloor substrates, AT&T shall implement the AT&T Asia-America Gateway Project Cable Slack Management Plan (dated January 2009). During cable surface-lay operations, AT&T shall employ a remotely-operated vehicle ("ROV")-follow vessel with real-time ROV video feed to the cable ship to ensure that the slack-control program is effective and to identify areas of cable suspension. If the ROV video feed identifies a suspended segment of cable that can be eliminated or minimized by repositioning or introduction of additional cable slack, AT&T shall recover the cable and reinstall it using the above methods. During post-lay inspection and burial operations, AT&T shall use a ROV to reposition and/or bury to 1.0 meter any suspended or exposed cable segment, unless precluded from doing so by seafloor substrates.

5. **Notification of Exposed Cable.** During the marine cable installation phase of the project, AT&T shall submit to (a) the Executive Director of the Coastal Commission ("**Executive Director**"), (b) the U.S. Coast Guard (for publication in a Notice to Mariners), and (c) the signatories of the Fishing Agreement (see **Special Condition 19**), weekly notices containing preliminary as-built coordinates of any unburied or exposed sections of cable. AT&T shall also make radio broadcast announcements on the local fishers' emergency radio frequency that provide the current cable installation location and a toll-free number that can be called for additional information.
6. **As-Built Documentation.** Within 45 days of completing marine cable installation, AT&T shall submit to the Executive Director and the members of the Central California Joint Cable/Fisheries Liaison Committee ("Cable Committee"), the Morro Bay Fisherman's Association, the Port San Luis Fisherman's Association and individual fishermen not represented by a fishing association: (a) as-built plans in writing (Route Position List) and alignment or strip charts depicting bathymetry, seafloor substrates or features, seabed profile, depth of cable burial below the seafloor, and cable tension; (b) electronic as-built plans (in a format to be determined by the Cable Committee); and (c) as-built cable plans overlaid on National Oceanic and Atmosphere Administration ("**NOAA**") navigation charts. The 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. The cable shall be considered installed the day after the last day of post-lay inspection burial operations.
7. **Cable Installation Report.** Within 60 days of cable installation, AT&T shall submit to the Executive Director a cable installation report containing, at minimum, the following: (i) a summary of pre-lay, cable-laying, and burial methods used; (ii) a summary of slack control equipment and methods applied during cable installation; (iii) identification of any areas of cable suspension greater than 1.0 meter from the seafloor and a description of why cable could not be re-routed to avoid suspended cable; (iv) an evaluation of the consistency of cable installation with the project description and applicable special conditions of this permit; and (v) a description of any observed fishing activity during the pre-lay and cable installation project phases.
8. **Cable Surveying.** Every 12 to 24 months for a total of two times during the first four years of the project, and then every five years thereafter (unless otherwise determined by the Executive Director based on a finding that portions of the cable route have not remained buried), AT&T shall survey those portions of the cable route from the mean high tide line to where project operations extend into federal waters out to the 1,000-fathom depth contour to verify that the cables have remained buried consistent with the as-built cable burial plan. The survey shall be conducted by a third party, approved by the Executive Director, using a ROV equipped with video and still cameras. Within 30 days of survey completion, AT&T shall submit to the Executive Director a report describing the results of the survey (including still images) and a copy of the videotape(s) recorded during the cable survey. The videotape(s) shall include a display that identifies the date, time, position, water depth, and heading of the ROV. If the survey shows that a segment(s) of a cable is no longer buried consistent with the as-built cable burial plan, AT&T shall, within

30 days of survey completion, submit to the Executive Director for approval a plan to re-bury those cable segments. Upon approval of the plan by the Executive Director, AT&T shall proceed to implement the plan in accordance with the time schedule specified therein.

9. **Marine Discharge.** There shall be no marine discharge of sewage or bilge/ballast water from vessels either installing or repairing the cables. A zero-discharge policy shall be adopted for all project vessels.
10. **Marine Mammal Monitoring.** Two trained marine mammal monitors, to be approved by the Executive Director, shall be onboard the cable installation vessel (including repair and maintenance operations), the post-lay inspection vessel, and burial vessels at all times to monitor for marine wildlife in the work area. In the event that, in the opinion of a monitor, 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 monitors shall have the authority to terminate all project activities until the observer determines there is no longer a threat. Two trained marine wildlife monitors approved by the Executive Director in consultation with NMFS shall be onboard all vessels used for retrieval of entangled fishing gear, and for the inspection surveys conducted every 18 to 24 months. During daytime observations, all monitors shall use binoculars with magnification of at least 7 and an objective lens diameter of at least 50. During nighttime observations, all monitors shall use nighttime vision equipment.

AT&T shall ensure that the monitors have a 360-degree view of all activities during all marine operations (e.g., cable installation, post-lay inspection, burial, maintenance and repair, retrieval of entangled fishing gear, and inspection surveys). If a marine mammal or sea turtle approaches the work area (defined as a 100-yard "safety zone"), or a monitor determines that project operations have the potential to threaten the health or safety of marine wildlife or "take" a protected species as defined by regulations implementing the federal Endangered Species Act (50 CFR § 222.102) and the Marine Mammal Protection Act (50 CFR § 216.3), the monitor shall have the authority to order cessation of all project operations until the monitor determine there is no longer a threat and/or the animal(s) transits the area. The captain shall comply with this order as soon as it safe to do so and for as long as the order remains in effect. If environmental conditions (e.g., high sea state, fog) preclude monitors from seeing out to at least one nautical mile, the monitors shall require personnel aboard work and support vessels to maintain heightened vigilance for an approaching marine mammal or sea turtle. If environmental conditions preclude the monitors from seeing within the 100-yard safety zone, the monitors shall have the authority to order cessation of all project operations until visual conditions improve. The captain shall comply with this order as soon as it is safe to do so and for as long as the order remains in effect. At least 10 days prior to the commencement of cable installation operations, AT&T shall provide to the approved marine wildlife monitors a document compiling all marine mammal and sea turtle mitigation measures that have been required of AT&T by the Coastal Commission, U.S. Army Corps of Engineers and the California State Lands Commission.

11. **Marine Mammal Report.** Within 30 days of the last day of all marine operations that require marine wildlife monitors onboard vessel(s), AT&T shall submit to the Executive

Director a copy of the marine mammal monitoring report prepared by the approved marine wildlife monitors. The report shall include: (a) an evaluation of the effectiveness of monitoring protocols and (b) reporting of (i) marine mammal, sea turtle, and other wildlife sightings (species and numbers); (ii) any wildlife behavioral changes that may have been attributable to project operations; and (iii) any project delays or cessation of operations due to the presence in the project area of marine wildlife species subject to protection.

12. **Cable Repairs.** AT&T shall provide notice of proposed cable repairs in writing to the Executive Director and in a U.S. Coast Guard Notice to Mariners 15 days prior to any cable repair or maintenance activity, or as soon as possible for emergency repairs.
13. **Update NOAA Charts.** Within 60 days of cable installation and any cable segment re-route, AT&T shall submit evidence to the Executive Director that it has submitted to NOAA: (a) geographic coordinates of the cable as-built plans using a Differential Geographic Positioning unit or comparable navigational equipment; and (b) AT&T's point of contact and telephone number.
14. **Cable Removal.** Within 90 days of either taking a cable out of service or after the expiration or sooner termination of AT&T's lease(s) or permit(s), AT&T shall apply for an amendment to this permit to remove the cable(s) from the territorial waters of the State of California. Upon approval by the Commission of the permit amendment, AT&T shall implement the cable removal project authorized by the amendment in accordance with the time schedule specified therein.
15. **Hard Substrate Habitat Mitigation.** Within 60 days of completing cable installation, AT&T shall compensate for project-related hard substrate habitat impacts through payment of \$100,000 ("Mitigation Fee") to the Regents of the University of California on behalf of the UC Davis Wildlife Health Center. The Mitigation Fee shall be used by the SeaDoc Society, a marine ecosystem health program of the UC Davis Wildlife Health Center, to remove lost fishing gear in the Southern California Bight as part of its California Lost Fishing Gear Recovery Project in accordance with the terms and conditions of a Memorandum of Agreement between the California Coastal Commission and the Regents of the University of California on Behalf of the Wildlife Health Center ("the Agreement"). (A Draft Agreement is attached as **Exhibit 3.**) If the Executive Director determines that the Wildlife Health Center is not carrying out the hard substrate impact mitigation project in accordance with the terms and conditions of the Agreement, the Executive Director shall require transfer of any Mitigation Fee funds remaining at the time of such determination to an alternative entity to implement an alternative hard substrate mitigation project acceptable to the Executive Director.
16. **Oil Spill Contingency Plan.** Prior to commencement of cable laying operations, AT&T shall submit to the Executive Director: (a) evidence that the California Office of Oil Spill Prevention and Response ("**OSPR**") has approved the non-tank oil spill contingency plan ("**OSCP**") for the project's cable laying vessels, pursuant to the non-tank vessel OSCP regulations found at 14 CCR Sections 825.03 - 827.02; and (b) a copy of the project-specific geographic oil spill plan supplement for AT&T's cable laying operation areas in

State waters offshore Morro Bay that, pursuant to information requirements of 14 CCR Sections 827.02 (g- i), AT&T will submit to the OSPR as part of its OSCP.

17. **Spill Response Contract.** Prior to commencement of offshore cable installation operations, AT&T shall submit to the Executive Director a copy of a signed contract with an oil spill response organization (“OSRO”) approved by the OSPR for shoreline clean-up operations.
18. **Cable Entanglements and Gear Retrieval.** In the event that fishermen snag a cable and lose or cut gear, or that any other type of entanglement occurs (e.g., whale), AT&T shall use all feasible measures to retrieve the fishing gear or object. AT&T shall notify the Executive Director within 48 hours of its knowledge of gear loss or other cable entanglement. Retrieval shall occur no later than six weeks after discovering or receiving notice of the incident, unless otherwise authorized by the Executive Director. If full removal of gear is not feasible, AT&T shall remove as much gear as practicable to minimize harm to wildlife (e.g. fishes, birds, and marine mammals). Within two weeks of completing the recovery operation, AT&T shall submit to the Executive Director a report describing (a) the nature of and location of the entanglement (with a map) and (b) the retrieval method used for removing the entangled gear or object or the method used for minimizing harm to wildlife if gear retrieval proves infeasible.
19. **Compliance with Fishing Agreement Requirements.** In a manner consistent with the requirements of the January 30, 2002 Agreement between Cable Companies and Fishermen (the “Fishing Agreement”, see **Exhibit 4**), AT&T shall comply with all deadlines for payment, reimbursement, and compensation of all expenses of the Cable Committee and Cable Committee representatives, as approved by the Cable Committee in its Annual Budget.
20. **Air Emissions.** Prior to commencement of marine operations, AT&T shall submit evidence to the Executive Director that AT&T has satisfied SLOAPCD’s BACT requirements. Within 60 days of completing cable installation, AT&T shall submit evidence of having provided adequate funding to SLOAPCD to implement emission reduction projects to offset construction-related NO_x emissions as required by SLOAPCD’s CEQA threshold requirements.
21. **Greenhouse Gas Emissions.** AT&T shall within 60 days of completing cable installation purchase carbon offsets certified by the California Climate Action Registry (CCAR) or the San Luis Obispo Air Pollution Control District consistent with the policies and guidelines of the California Global Warming Solutions Act of 2006 (AB 32). AT&T may also use offsets or credits from any source that is approved by the Executive Director and is consistent with the policies and guidelines of the California Global Warming Solutions Act of 2006 (AB 32). Within 60 days of completing cable installation, AT&T shall submit a report for Executive Director review and approval that identifies all construction-related emissions and offsets that were purchased from approved programs that resulted in zero net increase in emissions from project construction.

4.0 FINDINGS AND DECLARATIONS

4.1 Project Description

AT&T Corporation proposes to install and operate one submarine fiber optic cable between San Luis Obispo County and Hawaii. The cable extends to Guam and other Asian locations and will connect with the existing AT&T fiber optic system at a cable station southwest of San Luis Obispo (**Exhibits 1 and 2**). The project Environmental Impact Report (“EIR”) states that the terrestrial segment includes an existing conduit and manhole system (constructed in 1990) that starts at a beach manhole in the Sandspit Beach parking lot of Montana de Oro State Park. The underground conduit extends inland for approximately 10.5 miles to AT&T’s San Luis Obispo Cable Station (constructed in 1960). The coastal zone boundary crosses the existing conduit route just west of manhole 32.5, approximately six miles from the shoreline and two miles from the cable station. Beyond the Montana de Oro State Park boundary, the conduit system exists entirely within private easements held by AT&T, with the exception of two road crossings at Pecho Valley Road and Clark’s Gap Road. This route is commonly referred to as the “ridge route” conduit system because it is located along a ridge of hills located just south of Los Osos Valley Road. The terrestrial segment activities include:

- Accessing the various manholes along the route;
- Placing the cable into the conduit system through the manholes;
- Pulling a terrestrial fiber optic cable and a terrestrial power cable through the existing conduit system; and
- Installing a new ground bed within the existing San Luis Obispo Cable Station property.

Repairing and maintaining roadways and other corridor features to allow for installation of the new cable is included in the proposed project but no new construction of accessways or other features is proposed.

The shore-end segment of the project includes the Sandspit Beach parking lot manhole and one 5-inch diameter conduit (installed in 2001) that extends approximately 2,000 feet seaward from the manhole and terminates in a water depth of 33 feet. The shore-end segment activities include pulling one combined fiber/power marine cable from the offshore conduit terminus through the existing conduit to the parking lot manhole. Activities within this segment also include excavation around the offshore terminus of the conduit; cleaning of the conduit; and following cable installation, diver burial of the marine cable to a target depth of 3.3 ft. from the offshore terminus of the conduit to a location 0.8 miles offshore in a water depth of 98 feet.

Activities within the marine segment (seaward of the 98-foot isobath) include the pre-lay grapnel clearance along the cable route, placement of the cable from west to east (offshore to onshore), and where specified, burial to the 3.3-foot target depth via a combination of plow and Remotely Operated Vehicle (ROV) along a predetermined course seaward of the diver-buried segment. The nearshore, diver-buried course will follow the “sand channel” route where marine cables have been grouped since 2000. This route provides greater opportunity for burial of the cable because of the sedimentary nature of the seafloor. The cable will be buried out to the edge of the continental shelf, approximately 53 miles offshore in a water depth of 6,000 feet. However, in

limited areas of unavoidable hard bottom, the cable will be laid on the ocean floor. The EIR states that approximately 71.6% of the marine cable route crosses fine-grained (silt/clay) sediments, 21.1% crosses coarse-grained (sand/gravel) sediments, 0.1% crosses subcropping rock, and 7.2% crosses outcropping rock.

AT&T expects to commence project construction in spring 2009. The estimated duration of project installation work is approximately 15 to 20 weeks, broken down as follows:

- | | |
|------------------------------------|----------------|
| ▪ Terrestrial Operations | 4 to 6 weeks |
| ▪ Shore-End Preparation | 3 weeks |
| ▪ Shore-End Cable Installation | 1 week |
| ▪ Marine Cable Lay Operations | 3-4 weeks |
| ▪ Diver Post-Lay Burial Operations | 2-3 weeks |
| ▪ ROV Post-Lay Burial Operations | 2 to 3 weeks |
| ▪ Total Estimated Duration | 15 to 20 weeks |

AT&T states that no routine maintenance is expected or planned for this project, other than ensuring that the power feed and transmission equipment in the cable station remain in proper working order. Due to the stability of the ocean bottom environment, AT&T anticipates that regular maintenance of the marine cable will not be necessary. However, the cable could be damaged by saltwater intrusion, or anchors or fishing gear could snag the cable and cause a “fault” – a point at which data transmission is interrupted. If the cable is damaged or a fault occurs in shallow water, that cable segment would be repaired on the seafloor; in deeper water the cable would be lifted from the seafloor to a repair vessel. In both instances, the cable would be repaired and reburied in its original location or replaced on the ocean floor if it came from an unburied section.

AT&T states that the proposed project does not include the specific details of cable retirement. The marine cable is warranted to last for 25 years but it is unknown exactly how long the cable will be operated. Upon retirement, the cable could be donated to a research entity, sold to another owner-operator, abandoned in-place, or removed and salvaged. The project EIR states that:

Removal or abandonment of that portion of the conduit and cable within the leasing jurisdiction of the CSLC would be subject to prior authorization of the CSLC. A CSLC Lease 21 issued in connection with a new fiber optic cable project contains specific provisions to address the eventual abandonment “in place” or removal of such facilities and addresses the restoration of the Leased Premises. To insure that such provisions are addressed by the Lessee, posting of a sufficient bond by the Lessee will be required prior to issuance or assignment of a fiber optic cable lease.

As part of its consistency certification, AT&T agreed within 90 days of either taking the proposed cable out of service or after the expiration or sooner termination of AT&T’s lease(s) or permit(s), that it would submit a consistency certification to remove cable located in federal waters out to the edge of the continental shelf. **Special Condition 14** of this permit also requires AT&T within the same timeframe to apply for an amendment to this permit to remove the cable from the territorial waters of the State of California.

4.2 Prior Fiber Optic Cable Projects Approved by Coastal Commission

The Coastal Commission has approved a number of fiber optic cable projects in the ocean waters offshore of Montana de Oro State Park:

- In January 1992, the Coastal Commission approved the installation, operation, and maintenance of one cable, HAW-5, and four conduits by AT&T (CDP 4-91-61) offshore of Montana de Oro State Park.
- In September 1994, the Coastal Commission approved two additional cables, TPC5-T1 and TPC5-G by AT&T (CDP 4-91-61-A1) offshore of Montana de Oro State Park.
- In April 2000, the Coastal Commission approved the installation of two fiber optic cables and five offshore conduits by MFS Globenet and MCI WorldCom (E-99-011) at Montana de Oro State Park.
- In May and June 2000, the Coastal Commission approved the installation of two fiber optic cables by AT&T (E-98-029) off of Montana de Oro State Park.
- In September 2000, the Coastal Commission approved the installation of one fiber optic cable and five conduits at Manchester State Beach, and one cable off of Montana de Oro State Park by AT&T (E-00-004).
- In December 2000, the Coastal Commission approved the installation of a festoon fiber optic cable along the California coastline landing onshore at four locations (Morro Bay, Leadbetter Beach in Santa Barbara, Manhattan Beach, and Mission Beach in San Diego) by Global West Network, Inc. (E-00-008).

Through its federal consistency authority, the Coastal Commission has also concurred with numerous other consistency certifications, consistency determinations, and negative determinations for submarine fiber optic cable-related projects in other areas of the state by, for example, the Navy, Coast Guard, Federal Aviation Administration, MCI WorldCom, AT&T, and Global West.

In the aforementioned Commission actions on coastal development permits and consistency certifications for installation of fiber optic cables at the Montana de Oro State Park landing site, the Commission did not review in the consistency certifications the terrestrial segments of the cable projects, that is, that segment of the project extending from the mean high tide line inland through and beyond the coastal zone to the AT&T cable station southwest of San Luis Obispo. Given the length of time since the County of San Luis Obispo approved the original coastal development permit for the 1992 construction of the onshore conduit and manhole system, the Commission informed AT&T that its consistency certification would need to include the terrestrial segment of the project, and would need to document how the proposed activities along the existing conduit route would be undertaken consistent with the applicable policies of the California Coastal Management Program (“CCMP”), and in particular, the public access and recreation and environmentally sensitive habitat policies of the CCMP.

4.3 Permitting History of Existing Cable Conduit Route

Appendix F (“Biological Resources Survey Report”) of the project EIR provides a summary of the permit and construction history along the existing fiber optic cable route to be used by AT&T for installing the proposed fiber optic cable:

- In 1960, AT&T constructed the AT&T 03 Cable Station building just west of San Luis Obispo, and then proceeded to install 2 conduits and coaxial cables along what became known as the “ridge route” west to Montana de Oro State park.
- In 1992, AT&T constructed the HAW-5 trans-Pacific fiber optic cable landing site in Montana de Oro State Park, and extended horizontal bores to a depth of 30 feet into Estero Bay to provide a cable landing location that would avoid tidal disturbance. A new four-conduit system was installed along the ridge route to replace the unusable coaxial conduits, and fiber optic cable was installed in innerducts within three of the conduits. The fourth conduit was left vacant for future use.
- In 1994, AT&T landed the TPC-5 cable system in Los Osos, and placed two fiber optic cables and two power cables into the existing HAW-5 conduit along the ridge route to the AT&T 03 Cable Station building. The County of San Luis Obispo reviewed the project, and determined that the cable pull was part of the original HAW-5 permit process and additional discretionary review was not necessary if the project met all permit requirements.
- In 1998, as part of the China – U.S. cable project, AT&T pulled two additional fiber optic cables and two additional power cables through the existing HAW-5 cable conduit along the ridge route. The fiber optic cable was pulled from manholes located within the existing Sandspit Road and Rim Trail within the State Park and within the existing right of way along the ridge route to the AT&T 03 Cable Station building. As with the TPC-5 project, the County of San Luis Obispo determined that additional discretionary review was not necessary.

Appendix F then reviews the applicable conditions of approval attached to the aforementioned projects:

County Development Plan/Coastal Development Permit (D900132D) and ED90-848 allowed construction of the original AT&T HAW-5 fiber optic conduit system along the ridge route to occur in 1992. Construction of the cable landing and installation of cable along the ridge route was included in these original permits. The need for future installation of cable into existing bores or conduits was considered when the County evaluated and permitted the HAW-5 project, and the mitigation measures identified within the D900132D conditions of approval were designed to cover such activities. This permit and accompanying certified CEQA documentation (ED90-848) evaluated multiple cable pull operations (such as currently proposed), over the life of the cable landing, conduit route, and cable station.

The 1994 TPC-5 cable installation activities were conducted under the D900132D conditions of approval, following review by County staff. The review determined that the cable pull was part of the original HAW-5 permit process, the proposed activities were consistent with the conditions of approval, and that additional discretionary review was therefore not necessary.

The 1998 China-US cable pull was also conducted under the D900132D conditions of approval, without additional discretionary review by the County. The 1998 China-US cable pull involved pulling two fiber and two power cables along the existing ridge route, and was

very similar to the terrestrial portion of the currently proposed Asia America Gateway project.

The EIR states that consultation between AT&T and the County of San Luis Obispo Department of Planning and Building staff indicated that the County considers the existing coastal development permit (CDP D900132D) still applicable, and would not require a new or revised CDP unless AT&T's proposed Asia America Gateway fiber optic cable project cannot meet the requirements of the original conditions of approval. The original conditions were designed to allow initial construction (e.g., trenching, manhole installation, and general construction of the conduit system along the ridge route) and long-term maintenance and subsequent installation of fiber optic cables into the conduit system.

4.4 Coastal Commission's Permit and Federal Consistency Jurisdiction

The Coastal Commission retains coastal permit jurisdiction over project areas on public trust lands, tidelands, and submerged lands from the mean high tide line to three nautical miles offshore. Therefore, that portion of the project that involves cable laying within State waters (i.e., seaward of the mean high tide line to three nautical miles offshore) requires issuance of a coastal development permit from the Coastal Commission and is the subject of coastal development permit application E-08-021.

Portions of the proposed onshore route lie within the County of San Luis Obispo's coastal permit jurisdiction (from the mean high tide line inland to the coastal zone boundary), and that portion of the onshore route west of Pecho Valley Road (including the Sandspit Beach parking lot in Montana de Oro State Park) is within the appealable permit jurisdiction area. The existing cable landing at the Sandspit Beach parking lot was constructed in 1992 under a County Development Plan/Coastal Development Permit (D970257D). There was no appeal of that permit to the Coastal Commission.

The offshore component of the project requires a federal permit from the U.S. Army Corps of Engineers and therefore requires a consistency certification pursuant to Section 307(c)(3)(A) of the Coastal Zone Management Act. For the portion of the project that lies in State waters, the consistency certification is redundant; the coastal development permit serves as a consistency certification. However, for the portion of the project that lies outside the coastal zone, in federal waters out to the edge of the continental shelf and inland of the mean high tide line to the existing AT&T cable station, the applicant has submitted consistency certification CC-005-09 to the Commission. This staff report is a combined coastal development permit and consistency certification.

4.5 AT&T's Consistency Certification

AT&T has certified that the proposed activity complies with California's approved coastal management program (CCMP) and will be conducted in a manner consistent with the CCMP. AT&T has committed in its consistency certification to carry out the same requirements of **Special Conditions 1 through 21** where project operations extend into federal waters out to the edge of the continental shelf.

4.6 Other Agency Approvals

4.6.1 California State Lands Commission

The California State Lands Commission (“SLC”) is the lead agency under the California Environmental Quality Act (“CEQA”) for the proposed project. The proposed fiber optic cable will be installed, in part, in an existing submarine conduit previously reviewed by the SLC. On January 8, 1992, the SLC approved a General Permit-Right of Way Use Permit No. PRC 7603 to AT&T for the construction of four offshore conduits and the installation of one fiber optic cable within State waters and submerged lands offshore of Montana de Oro State Park. Subsequently, on August 3, 1994, the SLC approved an amendment to this permit that authorized AT&T to lay two additional cables.

The proposed use of the shore-end existing conduit, identified as Empty Conduit #5, is currently subject to an existing CSLC General Lease-Right of Way Use, PRC No. 8144.1 which was assigned to AT&T in 2006. Under the terms of the existing lease, approval for any future fiber optic cable project in connection with the existing improvement requires authorization from the CSLC. The CSLC is considering an application for a new General Lease-Right of Way Use for this fiber optic cable system crossing State sovereign lands. The lease, if authorized by the CSLC, will allow AT&T to install, use, and maintain the proposed fiber optic cable system.

In December 2008 the CSLC published a Draft Environmental Impact Report No. 745 (“EIR”) for the project. The CSLC is scheduled to certify the final EIR on March 2, 2009.

4.6.2 U.S. Army Corps of Engineers

The U.S. Army Corps of Engineers (“Corps”) has regulatory authority over the proposed project under Section 10 of the Rivers and Harbors Act of 1899 (*33 U.S.C. 1344*), Section 404 of the Clean Water Act, and Section 4(f) of the Outer Continental Shelf Lands Act (“OCSLA”), as amended. Section 10 of the Rivers and Harbors Act regulates the diking, filling and placement of structures in navigable waterways. Section 404 of the Clean Water Act regulates fill or discharge of materials into waters and ocean waters. Section 4(f) of the OCSLA requires a permit for the construction of artificial islands, installations, and other devices on the seabed to the seaward limit of the outer continental shelf. According to the Corps, cable laying on the seafloor beyond the three-mile State limit is considered an “installation” and “other device” on the seabed.

For the subject project, the Corps proposes to issue a Nationwide Permit 12 for discharges of dredged or fill material associated with excavation, backfill or bedding for utility lines. AT&T submitted an application to the Corps for a Nationwide 12 permit on December 23, 2008. Pursuant to Section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), any applicant for a required federal permit to conduct an activity affecting any land or water use or natural resource in the coastal zone must obtain the Coastal Commission’s concurrence in a certification to the permitting agency that the project will be conducted consistent with California’s approved coastal management program. The subject coastal development permit (E-08-021) and federal consistency certification (CC-005-09) will serve as Commission review of the project under the

CZMA. Should the Commission concur with the consistency certification and approve the coastal development permit for the proposed project, the Corps would then be able to issue its Nationwide 12 permit to AT&T.

4.6.3 Central Coast Regional Water Quality Control Board

The California Regional Water Quality Control Board – Central Coast Region (“RWQCB”) regulates waste discharges into receiving waters in the project area. AT&T applied for a water quality certification/waiver pursuant to Section 401 of the Clean Water Act on December 23, 2008. The Board is expected to issue its certification in early March 2009.

4.6.4 San Luis Obispo County

On November 14, 1991, the County of San Luis Obispo certified a Negative Declaration, pursuant to the California Environmental Quality Act (“CEQA”), for the drilling of four fiber optic cable directional bores from the Sandspit road parking lot in Montana de Oro State Park to the mean high tide line, the pulling of one cable, and for the onshore portion of the project. The existing underground conduit and manhole system (extending from the parking lot cable landing to the AT&T cable station) was constructed at the same time under a second County Development Plan/Coastal Development Permit (D900132D). This latter permit also provided authorization for ongoing operations, maintenance, and installation of additional cables in vacant conduit tubes, as long as such activities complied with the original permit conditions of approval. (One conduit in the existing system is currently empty and would be used by the proposed AT&T Asia America Gateway fiber optic cable.)

The County determined in 1998 that installation of two additional fiber optic cables into the existing onshore conduit (AT&T China – U.S. project) was consistent with its previous coastal development permit. On December 5, 2007, the County stated in a letter to the California State Lands Commission regarding the proposed project that:

The installation of cable into existing bore or conduit was considered when the County evaluated and permitted the previous projects. Mitigations were identified and conditions of approval were required based on those evaluations. Installation of cable at the landing and along the terrestrial project route, and all related activity, is subject to the conditions of approval associated with those previous approvals.

No new coastal development permit from the County will be required for the proposed project.

4.7 Coastal Act Issues

4.7.1 Dredging and Placement of Fill in Coastal Waters

Coastal Act section 30233(a) states in part:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this

division where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged depths on existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource dependent activities.*

Coastal Act Section 30233(a) restricts the Coastal Commission from authorizing a project that includes dredging and open coastal water fill unless it meets three tests. The first test requires that the proposed activity must fit into one of seven categories of uses enumerated in Coastal Act Section 30233(a). The second test requires that there be no feasible less environmentally damaging alternative. The third and last test mandates that feasible mitigation measures be provided to minimize the project's adverse environmental effects.

One of the seven allowable uses of fill under 30233(a) is a coastal-dependent industrial facility. The proposed Asia America Gateway (AAG) transoceanic fiber optic cable, whose purpose is to directly connect the United States with Southeast Asia, is "coastal-dependent" since it requires "a site on, or adjacent to, the sea to be able to function at all" as defined in Coastal Act Section 30101. The Commission thus finds that the proposed AAG cable meets the allowable use test of Coastal Act Section 30233(a).

The Commission must further find that there is no feasible less environmentally damaging alternative to the proposed project, particularly with respect to the impacts of submarine cables on marine organisms and hard bottom habitat. AT&T proposes to use an existing, vacant cable landing conduit to bring the submarine cable ashore. As such, the alternative analysis focuses on alternative submarine cable routes between the existing conduit terminus 0.8 miles offshore to the edge of the continental shelf approximately 50 miles offshore. The project EIR states that in order to reduce the amount of rocky habitat that would have been crossed by the proposed cable, two major revisions to the original cable route were completed following analysis of seafloor data collected during the Remotely Operated Vehicle (ROV) survey:

In the nearshore, the alignment was shifted approximately 0.06 mi (0.10 km) to the east along a 0.8 mi-long (1.3 km) area within Segment A in water depths ranging from 92 to 105 feet (28 to 32 m) that trends to the north and northwest (generally parallel to the shoreline). Offshore, in water depths ranging from 230 to 394 feet (70 to 120 m) the route was shifted up to 0.3 mi (0.4 km) to the south.

The project EIR also examined a cable re-route/maximum burial alternative to determine if it would minimize the amount of fill and dredging associated with the proposed cable route:

AT&T has developed a relatively detailed seafloor habitat map within the proposed fiber optic cable corridor and has proposed an alternative route that avoids most, but not all, of the rock features. This alternative route would minimize the area of rocky habitat crossed by the cable . . . For example, the area between KP [kilometer post] 8.0 and 8.1 would be re-routed to either the north or the south to avoid hard bottom outcrops on the seafloor. Only limited geologic and Remotely Operated Vehicle (ROV) survey information is available for the areas north and south of the proposed route outside of the surveyed corridor . . . However, the total length of additional cable at each re-route cannot be determined at this time due to the limitations of the existing route-specific geologic data. This alternative would reduce or eliminate potential impacts of the cable crossing rocky habitat and affecting this sensitive habitat and associated biota; however, realignment to facilitate maximum burial could conflict with cable spacing regulations.

The EIR concludes that the proposed cable route is environmentally superior to the cable re-route/maximum burial alternative for the following reasons:

This alternative would result in an increase in the duration of cable laying activities of at least several days and an increase in the amount of sedimentary seafloor that would be disturbed. Because the proposed cable under this alternative would cross existing cables along the revised route, potential system safety and risk of upset impacts would result. This could occur if a cable laying ship were to snag other existing cables while installing the proposed cable; it could also occur during maintenance of the proposed cable in the future. Other increased impacts associated with cable laying activities are also anticipated. Those impacts include: increased air emissions; a longer closure of potential fishing areas otherwise available to local fisherman; increased potential impacts to marine mammals and other marine organisms due to the increase in time required to lay the longer cable; and increased aesthetic impacts from the cable laying ship from onshore viewing areas. While none of these impacts increase the impact category from Class II to Class I, the construction-related impacts are anticipated to be greater for this alternative than for the proposed Project.

The Commission has determined in previous coastal development permits and consistency certifications that the general offshore route proposed for the AAG fiber optic cable minimizes crossings of hard-bottom habitat while adhering to federal and industry regulations governing the spacing of submarine communication cables. The Commission agrees with the analysis provided in the project EIR, finds that the proposed offshore route of the AAG fiber optic cable project is

the least environmentally damaging feasible alternative, and therefore meets the second test of Coastal Act Section 30233(a).

The final requirement of Coastal Act Section 30233(a) is that dredging and filling of coastal waters may be permitted if feasible mitigation measures have been provided to minimize any adverse environmental effects. In other sections of this report, the Commission has identified feasible mitigation measures that will minimize the adverse environmental effects of the AAG cable. With the imposition of the conditions of this permit, and implementation by AT&T of mitigation measures agreed to in its consistency certification, the Commission finds that the third test of Coastal Act Section 30233(a) has been met.

4.7.2 Marine Resources and Water Quality

The Coastal Act provides the following:

Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

4.7.2.1 Marine Mammal and Sea Turtle Impacts

There are three potential types of impacts to whales and other marine wildlife due to the proposed project: entanglement with the project cable, entanglement with “ghost nets” or abandoned fishing gear, and collision with project vessels.

Potential Whale Entanglement with the Project Cable

Whales that migrate through coastal waters in the project area may become entangled in unburied or insufficiently buried cable or in cable suspensions. AT&T estimates that approximately eight percent of the total cable distance to the edge of the continental shelf (approximately four miles) crosses hard substrate where the cable will not be buried and will instead be placed on the ocean floor.

The Marine Mammal Protection Act of 1972 protects whales. In addition, the sperm whale is federally listed as an endangered species and is therefore protected by the federal Endangered

Species Act. Gray whales have been delisted from the federal endangered species list due to increased population numbers. Cable entanglement with other marine mammals such as pinnipeds (*e.g.*, sea lions, harbor seals) and fissipeds (*e.g.*, sea otters), or with sea turtles, is not expected to occur because these animals do not exhibit similar diving and/or feeding behaviors in bottom sediments.

To date, whale entanglement with fiber optic cables has not been reported offshore California. Heezen (1957) documents fourteen examples of sperm whale entanglements with submarine telegraph cables worldwide.¹ Most of the entanglements evaluated by Heezen involved cases of deep-diving, bottom-feeding sperm whales that, he postulated, became entangled "...while swimming along in search of food, with their lower jaw skimming through the upper layer of sediment. It may also be that the whales attacked the cable mistaking it for prey." The report documented fourteen instances of whales entangled in submarine cables that led to death. All whales positively identified were sperm whales, with possible entanglements of baleen (*e.g.*, gray) whales in shallower water, and one humpback whale reported entangled in Alaskan waters.

Heezen's (1957) study consisted of a search of all available cable failure records of four cable companies; the record is only considered complete for those companies for the years 1930-1955. The scope of the study was somewhat limited by the fact that, prior to 1930, cable failure reports generally lacked detail or were incomplete. Current knowledge of whale entanglements is further limited by the lack of any contemporary and comparable analysis of this topic since these studies. Moreover, since many cables have been abandoned since first laid, and since the only basis for discovering entanglement is interruptions to service, which is not possible to assess for abandoned cables, and since no examination of failure rates for operational cables worldwide has been made since 1957, the present rate of whale entanglement is unknown. Interpretation of entanglement risk amounts to speculation, but entanglement risk may be affected by these factors: oceanic depth of the cables; burial depth of the cables; presence of suspended cables over submarine trenches or rocky substrates; and the relative tautness of unburied cables (more specifically, shallow, unburied, looped or suspended cables pose more of a hazard than deeply buried cables).

Gray Whales and Sperm Whales and Entanglement Risk

Of the whale species (*i.e.*, gray, humpback, blue, fin, sei, sperm) that are known to migrate past the project area, two species--the California gray whale (*Eschrichtius robustus*) and sperm whale (*Physeter macrocephalus*)--have the potential to become entangled due to, respectively, bottom-feeding behavior or deep-diving behavior.

Approximately 20,000 gray whales migrate through California waters each year between Alaskan waters and Baja California. Due to their abundance off the Pacific coast, their tendency

¹At the time of the study, there were nearly a half-million miles of cable laid on the sea floor in various parts of the world (Heezen 1957). By 1928, 21 separate cables crossed the Atlantic to Canada and the United States. 658,375 km of fiber optic cable was expected to be installed and operational by the year 2003 (Rampal 1998). That figure equates roughly to an additional 514,050 miles of cable in the marine environment, making a total of more than 1 million miles of cable in the marine environment, not including that which was installed between 1957 and the advent of fiber optic cable installation, and any of which may have been removed since then.

to hug the shoreline during migration, and their bottom feeding patterns, gray whales may face the highest risk of entanglement with insufficiently buried or exposed cables. The majority of southbound (November to January) gray whales migrate within 2 nautical miles (nm) from shore, while the northbound migration occurs much closer to shore, with mother and calves reported within kelp beds and sometimes only yards from the shoreline. These distances, however, vary seasonally over time, particularly due to the deterring presence of boat traffic. The number of migrating gray whales recorded near San Clemente Island suggests that a significant proportion of the total population crosses the project area during the southbound and northbound migrations (E&E, 2001).

Gray whales usually feed nearshore in soft-bottom sediments, and also typically feed opportunistically during migration. (MMS 1989) Gray whale seafloor foraging methods include diving, rolling onto one side on the seafloor, and sucking up sediments that the whale filters with its baleen. (E&E, 2001) One study also found sea floor gouges approximately 15 centimeters deep created by migrating gray whales offshore of Northern California, and concluded that migrating gray whales interact with the muddy part of the central marine shelf (at 60-120 meter water depths), although this behavior was determined to be secondary to their migratory objective. (Cacchione et al, 1987) Gray whales can also dive in waters from 150 to 200 meters deep, but usually prefer shallower water.

Sperm whales are much less abundant off the coast of California than gray whales, numbering only approximately 1,200 individuals. Sperm whales typically inhabit deep open waters, and are the deepest and longest diving of all cetaceans. Sperm whales regularly dive to water depths between 200 and 1,000 meters. (E&E, 2001) Sperm whales are the only species confirmed to have been entangled in a submarine cable, and their deep diving puts them at risk of entanglement with insufficiently buried, exposed, or suspended cables. However, based on aerial and boat surveys off California, sperm whales are usually found north of the project area. (Fahy 2002) In addition, unlike gray whales, sperm whales do not bottom feed; instead, they feed solely on squid and octopi found in the water column. (E&E, 2001) NMFS has therefore determined the risk of sperm whale entanglement to be very low. (Fahy 2002)

Given the diving depth ranges of both gray whales and sperm whales, and the bottom-foraging behavior of gray whales, the potential for cable suspensions increases the risk of whale entanglement in cables. In addition, due to the protection of these marine mammals under the Endangered Species Act and the Marine Mammal Protection Act, entanglement or injury impacts due to insufficiently buried or exposed cables would be significant. Furthermore, during the 12 to 24 month period between cable route inspections, portions of cable can become unburied, further increasing the risk of entanglement. While AT&T reports that it can bury the proposed cable along 92% of the route, several permit conditions have been incorporated into the project in order to minimize any potential for whale interaction with the project cables, and to document any future entanglements.

During cable laying, **Special Condition 10** requires two trained marine mammal monitors approved by the Executive Director to be present onboard the cable installation vessel (including repair and maintenance operations), the post-lay inspection vessel, and burial vessels at all times to monitor the presence of marine wildlife that approaches the 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. Two trained marine wildlife monitors approved by the Executive Director, in consultation with NMFS, shall be onboard all vessels used for retrieval of entangled fishing gear, and for the inspection surveys conducted every 18 to 24 months. During daytime observations, all monitors shall use 7 x 50 reticulated binoculars. During nighttime observations, all monitors shall use nighttime vision equipment.

AT&T is to ensure that the monitors have a 360-degree view of all activities during all marine operations (*e.g.*, cable installation, post-lay inspection, burial, maintenance and repair, retrieval of entangled fishing gear, and inspection surveys). If a marine mammal or sea turtle approaches the work area (defined as a 100-yard “safety zone”), or the monitors determine that project operations have the potential to threaten the health or safety of marine wildlife or “take” a protected species as defined by regulations implementing the federal Endangered Species Act and the Marine Mammal Protection Act, the monitors shall have the authority to order cessation of all project operations until the monitors determine there is no longer a threat and/or the animal(s) transits the area. The captain shall comply with this order as soon as it safe to do so and for as long as the order remains in effect. If environmental conditions (*e.g.*, high sea state, fog) preclude monitors from seeing out to at least one nautical mile, the monitors shall require personnel aboard work and support vessels to maintain heightened vigilance for an approaching marine mammal or sea turtle. If environmental conditions preclude the monitors from seeing within the 100-yard safety zone, the monitors shall have the authority to order cessation of all project operations until visual conditions improve. The captain shall comply with this order as soon as it is safe to do so and for as long as the order remains in effect. The monitors will also be provided for project operations in federal waters to the 1,800-meter water depth. In addition, at least 10 days prior to the commencement of cable installation operations, AT&T shall provide to the approved marine wildlife monitors a document compiling all marine mammal and sea turtle mitigation measures that have been required of AT&T by the Coastal Commission, U.S. Army Corps of Engineers and the California State Lands Commission.

Special Condition 11 requires AT&T to submit, to the Executive Director, within 30 days of the last day of all marine operations that require marine wildlife monitors onboard a vessel(s), a marine wildlife monitoring report prepared by the approved marine wildlife monitors. The report shall include: (a) an evaluation of the effectiveness of monitoring protocols and (b) reporting of (i) marine mammal, sea turtle, and other wildlife sightings (species and numbers); (ii) any wildlife behavioral changes that may have been attributable to project operations; and (iii) any project delays or cessation of operations due to the presence in the project area of marine wildlife species subject to protection.

Special Condition 3 requires AT&T to bury in State waters the cables to a depth of 1.0-meter except where precluded by seafloor substrates. Where a 1.0-meter burial depth cannot be achieved, AT&T is to bury the cables to the maximum depth feasible. In order to ensure that cable installation is consistent with the project description, **Special Condition 6** requires AT&T to submit to the Executive Director the as-built plans, including burial depth, of the project cable.

Special Condition 4 requires AT&T to address portions of the route where cable burial is infeasible due to seafloor substrates. To address portions of the route where cable burial is

infeasible due to seafloor substrates, AT&T shall implement the AT&T Asia-America Gateway Project Cable Slack Management Plan (dated January 2009). During cable surface-lay operations, AT&T shall employ a remotely-operated vehicle ("ROV")-follow vessel with real-time ROV video feed to the cable ship to ensure that the slack-control program is effective and to identify areas of cable suspension. If the ROV video feed identifies a suspended segment of cable that can be eliminated or minimized by repositioning or introduction of additional cable slack, AT&T shall recover the cable and reinstall it using the above methods. During post-lay inspection and burial operations, AT&T shall use a ROV to reposition and/or bury to 1.0 meter any suspended or exposed cable segment, unless precluded from doing so by seafloor substrates.

Special Condition 18 provides a system for minimizing cable impacts to marine wildlife by requiring that in the event that fishermen snag a cable and lose or cut gear, or that any other type of entanglement occurs (e.g., whale), AT&T shall use all feasible measures to retrieve the fishing gear or object. AT&T shall notify the Executive Director within 48 hours of its knowledge of gear loss or other cable entanglement. Retrieval shall occur no later than six weeks after discovering or receiving notice of the incident, unless otherwise authorized by the Executive Director. If full removal of gear is not feasible, AT&T shall remove as much gear as practicable to minimize harm to wildlife (e.g. fishes, birds, and marine mammals). Within two weeks of completing the recovery operation, AT&T shall submit to the Executive Director a report describing (a) the nature of and location of the entanglement (with a map) and (b) the retrieval method used for removing the entangled gear or object or the method used for minimizing harm to wildlife if gear retrieval proves infeasible.

As a preventive measure against potential entanglement impacts, **Special Condition 8** requires that every 12 to 24 months for a total of two times during the first four years of the project, and then every five years thereafter (unless otherwise determined by the Executive Director based on a finding that portions of the cable route have not remained buried), AT&T shall survey those portions of the cable route from the mean high tide line to where project operations extend into federal waters out to the 1,000-fathom depth contour to verify that the cables have remained buried consistent with the as-built cable burial plan. The survey shall be conducted by a third party, approved by the Executive Director, using a ROV equipped with video and still cameras. Within 30 days of survey completion, AT&T shall submit to the Executive Director a report describing the results of the survey (including example still images) and a copy of the videotape(s) recorded during the cable survey. The videotape(s) shall include a display that identifies the date, time, position, water depth, and heading of the ROV. If the survey shows that a segment(s) of a cable is no longer buried consistent with the as-built cable burial plan, AT&T shall, within 30 days of survey completion, submit to the Executive Director for approval a plan to re-bury those cable segments. Upon approval of the plan by the Executive Director, AT&T shall proceed to implement the plan in accordance with the time schedule specified therein.

Further, **Special Condition 14** requires that within 90 days of either taking the cable out of service or after the expiration or sooner termination of AT&T's California State lands Commission lease(s) or permit(s), AT&T is to apply for an amendment to this permit to remove the cable from the territorial waters of the State of California. Upon approval by the Commission of the permit amendment, AT&T shall implement the cable removal project authorized by the amendment in accordance with the time schedule specified therein.

Entanglement with Ghost Nets and Abandoned Fishing Gear

Fishermen may snag gear or nets on cables. When this occurs, fishermen generally abandon their gear or nets (creating “ghost nets”), thereby creating a risk to marine mammals and other species. Pursuant to a “Fishing Agreement” executed by AT&T with various fishermen and their representatives (**Exhibit 4**), when it appears that a fisherman has snagged a cable, he or she is expected to cut the gear instead of risking damage to the cable. If the fisherman was operating consistent with established procedures, AT&T will reimburse the fisherman for the lost gear. This abandoned gear and particularly the nets, however, then becomes a hazard to marine life, potentially entangling marine mammals and fish, preventing them from feeding and causing them to drown, over the long term.

As discussed above, **Special Condition 18** requires AT&T to use all feasible measures to retrieve entangled nets or gear as soon as possible but no later than six weeks after discovering or receiving notice of the incident. If full removal is not feasible, AT&T is to remove as much gear as practicable to minimize harm to wildlife. Within two weeks of completing a recovery operation, AT&T is to submit to the Executive Director a report describing the nature and location of the entanglement and the retrieval method used.

Marine Mammal or Sea Turtle Collision with Project Vessels

Another potential impact to marine mammals and to sea turtles is collision with project vessels during all marine operations associated with the proposed project. The EIR states that:

The speed of the cable lay vessel is expected to be slow enough to reduce or eliminate possible marine mammal/vessel interactions, and because no anchoring is proposed for that vessel, the potential for impacts to marine mammals, including the endangered sea otter, is expected to be less than significant. However, due to the limited maneuverability of the vessel during cable laying operations within the Project region, marine mammals traversing in a perpendicular direction to the vessel's route could collide with the vessel or become entangled in the deployed cable. Although considered unlikely, vessel/cable-related impacts to marine mammals are considered potentially significant and require mitigation (Class II).

According to the Project-specific cable burial assessment (NEC 2008) the vessel that supports either the ROV or sea-plow during the burial process is expected to proceed at speeds between 0.5 and 1.1 miles per hour (0.2 and 0.5 meters per second). That speed is expected to be slow enough to preclude marine mammal/vessel interaction. The vessel is expected to be limited in its maneuverability while the equipment is deployed and therefore the possibility of a marine mammal/vessel interaction is not likely, but exists. Because of their special status, impacts to marine mammals, including a collision or entanglement of a marine mammal with the vessel or ROV/sea-plow cable, respectively, are considered potentially significant, although unlikely.

The potential for support vessel-marine mammal interaction during vessel transit to and from the Project site is possible. Impacts from such a collision are considered potentially

significant, although unlikely. According to NOAA Fisheries, gray whales migrate along the central coast of California from March to June and can be encountered near the Project site during this period. During that period, there is a possibility that females (cows) accompanied by their calves could be migrating through the marine waters of the Project area. An increase in Project-related vessel activity may also cause disturbance and result in separation of cows from their calves. With an anticipated offshore construction start in the second quarter (April to June) of 2009, vessel impacts to marine mammals are considered potentially significant and require mitigation (Class II).

AT&T proposed to develop and implement a “*Marine Wildlife Contingency Plan*” to address potential impacts to marine mammals from cable laying and burial operations. The original plan was reviewed by the National Marine Fisheries Service and subsequently modified to address the agency’s concerns. AT&T states that the proposed project now includes:

A Marine Wildlife Contingency Plan for the pre- and post-lay surveys and cable lay operations shall be prepared and will include measures to reduce the chance of vessel/marine mammal interactions and noise-related impacts to marine mammals within the area most likely to support the most common cetaceans.

That Plan shall include the provision for the appropriate number of NOAA Fisheries-approved marine mammal monitors to be onboard vessels that could cause an impact to marine mammals including the cable lay, cable burial and transport vessels for complete daytime observations during marine construction activities within 50 miles (80 km) of the shore. The Plan will also include notification procedures and lists of the federal and state agency staff to be contacted in the event of a marine mammal strike.

The Plan will also include a specified distance from the vessels within which the 160 dB re: 1 uPa rms noise level is expected to occur and will discuss the actions that the onboard marine wildlife observers can institute, including but not limited to cessation of activities, if a marine mammal or reptile is showing noise-related behavioral changes within that safety zone.

The Plan will be reviewed and approved by NOAA Fisheries prior to the initiation of in-water activities.

The Commission has determined in previous fiber optic submarine cable projects that the most effective way to prevent marine mammal or sea turtle collisions with project vessels is to monitor effectively for the presence of marine mammals or sea turtles in the project area. During cable laying, **Special Condition 10** (described in greater detail on page 22 of this report) requires two trained marine mammal monitors that are approved by the Executive Director to be present on the cable installation vessel (including repair and maintenance operations), the post-lay inspection vessel, and burial vessels at all times to monitor for marine wildlife in the work area. The monitors shall also be onboard all vessels used for retrieval of entangled fishing gear and for the post-installation inspection surveys, as required by **Special Conditions 18 and 8**, respectively).

4.7.2.2 Hard Substrate Impacts

Cable-laying operations could adversely impact hard substrate habitat and associated biota. Hard substrate is exposed rocky seafloor area that provides habitat for a diverse group of plants and animals. Common epifaunal invertebrates occurring in the hard substrate areas vary based on depth and substrate relief height. Along much of the California coast, there is a strong positive association between the types of communities and the depths and substrate types in which they occur. Hard substrates, including rocky bottoms, rock outcrops, and rock crevices, provide habitat and shelter for numerous sessile organisms, demersal fishes, and mobile invertebrates such as lobsters and crabs. In shallow waters (less than 200 meters or 656 feet), algae and anemones such as *Corynactis californica* are present. In deeper waters (greater than 600 meters or 1,968 feet), hydroids provide substrate to anemones, amphipods, polychaetes, and ectoprocts. Gorgonians, large sponges, shrimp, crinoids, and ophiuroids, brittle stars, and seastars are also present.

Hard substrate (especially high-relief substrate) and its associated biota are rare, and therefore any effect to them is potentially significant. Impacts to high-relief substrate in particular are significant because: (a) deepwater reefs are relatively rare along the central and southern California coast; (b) they support a diverse assemblage of epifaunal invertebrates; (c) they attract fish as a nursery ground, food source, and as shelter; and (d) epibiota residing on rocky substrates are sensitive to mechanical disturbance and increased sediment loads. Impacts (*e.g.*, crushing, displacement) to hard substrate can occur during anchoring, the pre-lay grapnel run and cable lay, burial operations and cable repairs. Laying of cable on rocky substrates will disrupt associated bottom communities, likely crushing and/or dislodging small, sessile or relatively sedentary invertebrates along a narrow strip. Sessile species may experience repeated, localized disturbances throughout the life of the cable if it moves due to current action.

AT&T worked with staff of the California State Lands Commission to route the proposed marine cable to minimize hard substrate impacts. AT&T did make some adjustments to the route to avoid some rocky areas, but it cannot be avoided fully. Based on a burial assessment survey of the proposed cable route (out to the edge of continental shelf) performed in May 2008 by NEC Corporation, there is approximately 4.17 miles of substrate that is “not ploughable” due to seafloor conditions (approximately 8% of the total length of cable route out to the edge of the continental shelf). Areas where cable cannot be buried are considered to be hard substrate.

Potentially significant impacts to hard substrate and biota could occur if rock features are crossed with the grapnel. The grapnel will be dragged along the proposed alignment in soft sediment areas and is expected to disturb a three foot-wide area along the centerline of the cable lay corridor. AT&T prepared a grapnel survey plan depicting areas of rocky seafloor substrate where the grapnel *will not be used*. In the nearshore area, where some support vessel anchoring will occur, AT&T can avoid all hard substrate.

AT&T will, however, lay cable over areas of hard substrate. The Commission calculates the hard substrate impact area by multiplying the length of cable that will be laid over hard substrate by double the cable width (because the cable does not necessarily stay stationary). In this case, AT&T estimates the length of cable to be laid over hard substrate to be 22,000 feet. Double the

width of cable is 3 inches or 0.25 feet. The projected hard substrate impact area is thus 5,500 square feet. As described above, cable-laying activities, and any ongoing movement of the cable over the life of project, has the potential to damage or crush rocky substrate and its associated biota.

In its consistency certification, AT&T has agreed to compensate for potential project-related impacts to hard substrate and its biota by paying \$100,000 to the UC Davis Wildlife Health Center's California Lost Fishing Gear Recovery Project. Started in 2005 by the SeaDoc Society, a marine ecosystem health program of the UC Davis Wildlife Health Center, the primary purpose of the California Lost Fishing Gear Recovery Project is to remove commercial fishing gear that is accidentally lost or intentionally discarded in California's marine environment. Millions of derelict nets, fishing lines, lobster traps, and crab pots litter the world's oceans, sitting on the seafloor, getting caught on rocky reefs, or floating in the water column. The majority of this gear does not decompose in water and can remain in the marine environment for years.

Derelict fishing gear is likely found in the water along the entire coast of California. The gear is potentially hazardous to divers and an array of wildlife including seabirds, turtles, sea otters, and other marine mammals. Derelict fishing gear affects the marine environment in several ways: it can continue to "catch" fish and marine animals, which become enmeshed or trapped, and it can damage the habitat upon which it becomes entangled or upon which it rests. It is also a visual blight on the seafloor, diminishing the natural aesthetic quality of the seafloor and rocky habitat. Currently, the SeaDoc Society is focusing gear recovery efforts in the newly established Central Coast Marine Protected Areas network and near the Channel Islands.

In **Special Condition 15**, the Commission is requiring AT&T within 60 days of completing cable installation to pay the \$100,000 mitigation fee to the UC Davis Wildlife Center to be used to remove lost fishing gear within the area of the Southern California Bight. Attached as **Exhibit 3** is a Draft Memorandum of Agreement ("MOA") between the Coastal Commission and the Regents of the University of California on behalf of the UC Davis Wildlife Health Center. The MOA requires the Wildlife Health Center, within 45 days of receiving the mitigation fee, to submit to the Executive Director for review and approval a spending plan. The spending plan is to include, at minimum, a description of the mitigation project and its estimated cost. In developing the spending plan, Commission staff will work with the Wildlife Health Center to see if there is opportunity to use these funds to remove lost fishing gear from areas of hard substrate. Within one year of the Executive Director's approval of the spending plan, the Wildlife Health Center is to complete the mitigation project. The Commission believes that removing lost fishing gear from the marine environment, particularly gear entangled with hard substrate, will offset the projected impacts to rocky bottom areas caused by cable-laying activities.

4.7.2.3 Soft Bottom Habitat Impacts

Soft-bottom areas are unconsolidated sediments (e.g., gravel, coarse-grained and mixed sediments, sand, and mud) that provide habitat to epifauna (surface living) and infaunal (below-surface living) organisms. Impacts to epifauna and infauna due to the proposed project are of concern because: (1) the proposed cable burial will disturb their seafloor habitat; (2) many infaunal organisms have limited mobility and cannot easily escape habitat disturbance or rapidly

repopulate regions of disturbance; and (3) they are a source of food for more mobile epifaunal and pelagic marine organisms such as crabs, fin fish, and marine mammals.

Approximately 92 percent of the proposed cable route crosses soft-bottom habitat. In October 2007, Applied Marine Sciences, Inc. (AMS) completed a remotely-operated-vehicle (ROV) survey of the seafloor habitats within the proposed cable route corridor between the 56 and 512 feet isobaths. Data collected during that survey were used to characterize the seafloor habitat and associated biota. The EIR summarized the survey results as follows:

*Segments A, B, and C. In water depths less than 100 feet where the surficial sediment was characterized as fine to medium-grain sand with shell hash, the most common epifauna observed were the ornate tube worm (*Diopatra ornata*), cancer crabs (*Cancer sp.* and *C. gracilis*), and a sea pen (*Stylatula elongata*). Three species of sea stars, *Asterina miniata*, *Mediaster aequalis*, and *Pisaster brevispinus*, were more abundant in the sediments of Segment C. In water depths less than 100 feet the fish observed in sedimentary substrate areas were cuskeels (*Chilara sp.*), flatfishes including sanddabs (*Citharichtys sp.*), tubesnout (*Aulorhynchus flavidus*), unidentified rockfish (*Sebastes sp.*), and anchovies (*Engraulis mordax*) in the water column. Squid (*Loligo sp.*) were also observed in the water column.*

*Segments D, E, and the inshore portion of F. The sedimentary habitat in water depths between 100 and 340 feet ranged from coarse sand and gravel in the shallower areas to fine sand and silt and supported a macroepifauna dominated by sea pens (*Stylatula sp.* and *S. elongata*, *Ptilosarcus gurneyi*, *Acanthoptilum sp.*, and two species of *Virgularia*), brittle stars (unidentified *Ophiuroids* and *Ophinoneris sp.*), assorted sea stars (*Petalaster [Luidia] foliolata*, *Rathbunaster californica*, and, in the inshore portions, *Pisaster brevispinus*, *Cerianthid* and other anemones (*Pachycerianthus sp.*, *Urticina piscivorus*, *Urticina sp.*, and *Stomphia coccinea*, respectively), cancer crabs including the slender crab (*Cancer gracilis*) and octopus (*Octopus rubescens*) were common to abundant within the sedimentary habitat in this water depth range.*

*Fish observed within the shallower portions of these segments, 105 to 220 feet, included tonguefish (*Symphurus atricauda*), flatfishes including sanddabs (*Citharichthys spp.*), California halibut (*Paralichthys californicus*), Dover sole (*Microstomas pacificus*), and English sole (*Pleuronectes=Parophrys vetulus*), tonguefish (*Symphurus atricauda*), eelpouts (*Lycodes sp.*), poachers (*Agonidae*), cuskeels and rockfish (juvenile and adult). In depths from 250 to 280 feet common fish taxa included eelpouts, poachers, sculpins (*Cottidae*), and skates (*Raja sp.*) In depths greater than 280 feet, pink surfperch (*Zalembeus rosaceus*), hagfish (*Eptatretus stouti*), poachers, rockfish, anchovies, tonguefish, skates, flatfish including sanddabs and sole (*Pleuronectidae*), eelpouts and cuskeels were common to abundant.*

*Segment F, offshore. In water depths greater than 340 feet, a free-living polychaete “fire worm” (family *Amphinomidae*) was the most commonly observed invertebrate. Other common epibiota observed within the deeper portions of the survey area included several species of previously observed sea pens including *Acanthoptilum sp.* and *Virgularia spp.*,*

and brittle stars (unidentified Ophiuroids, Amphiodia sp., and Amphipholis sp.). Commonly observed demersal fish observed within these water depths included cuskeels, eelpouts, sanddabs, and hagfish.

The EIR states that potential impacts to marine habitats and associated biota could occur throughout the cable laying operation, including those resulting in seafloor disturbance (i.e., pre-lay grapnel clearance, diver support vessel anchoring, excavation around the conduit, and the laying and burial of the cable). In addition, during periodic surveying of the cable route as required by **Special Condition 8**, any cable segments that have become exposed will be reburied with an ROV jet pursuant to an approved re-burial plan.

In evaluating the significance of potential project impacts on soft-bottom habitat and associated biota, the EIR states that:

Excavation of sandy sediments around the conduit will result in short-term and local increases in turbidity, but is not expected to have any significant effects on the existing biota and habitat, which are routinely subjected to and adapted to wave-induced turbidity. Following completion of the cable lay operations, the excavated area is expected to refill and to support infauna and epibiota similar to that which exists.

The increase in turbidity and seafloor disturbance associated with burial of the cable within the sedimentary seafloor habitat areas is considered a local, short-term, and less than significant impact (Class III). The areas of disturbance in water depths deeper than 120 feet (37 m) are expected to remain for up to several years; inshore of that water depth, natural deposition is expected to make the disturbed area undetectable within a few weeks of completion of the burial. Likewise, dragging the cable to the conduit prior to installation will result in seafloor disturbance and water column turbidity. Because the sedimentary habitat and associated biota within this area are routinely subjected to natural perturbations from wave action, these effects are expected to be local, short-term, and less than significant (Class III).

...

Abandonment activities will result in additional seafloor disturbance from diver, grapnel, and/or ROV-facilitated exposure and recovery of the cable, and from anchoring of work vessels. The resuspension of sediments over the cable will also increase turbidity within the water column . . . Because the activities associated with abandonment and removal are short-term, local, and will allow the habitat and biota to return to pre-installation conditions, the impacts are not considered significant (Class III).

The soft-bottom habitat area to be disturbed by the proposed project would be relatively small given the geographical extent of this habitat type offshore of Morro Bay, given that no species of special concern occur in the project area's soft-bottom habitat, and due to the rapid recolonization and recovery of most soft-bottom communities following short-term and localized disturbance.

4.7.2.4 Marine Water Quality Impacts

The proposed project is located offshore of Morro Bay in water depths extending to 6,000 feet. The EIR states that nearshore water quality is influenced by general oceanographic conditions, local wave climate and currents, nearby ocean outfalls and discharges, and freshwater inflows. Petroleum development activities, commercial vessel traffic, natural hydrocarbon seeps, river runoff, municipal wastewater outfalls, and minor industrial outfalls all contribute to increased levels of nutrients, trace metals and synthetic organic contaminants in offshore waters. The largest municipal outfall in the project area is six miles to the north and serves the communities of Morro Bay and Cayucos. Historically this outfall has had low impacts to local water and sediment quality beyond 50 feet of the zone of initial dilution surrounding the outfall. Contaminated sediments are not known or expected to occur in any of the areas crossed by the proposed cable. Compared to coastal waters of the Southern California Bight, human inputs into the waters offshore of Morro Bay are fewer and these marine waters are considered relatively clean.

Potential impacts on marine water quality due to the project are identified as: (1) impacts to filter-feeding benthic organisms due to increased turbidity during cable installation (including grapnel, burial, re-burial, repair, and hand-jetting operations); (2) the release of sewage and bilge/ballast water from project vessels; (3) impacts from fiber optic cable operation; and (4) increased erosion, sedimentation, and other potential water quality impacts related to terrestrial construction activities.

The project includes minor excavation at the terminus of the existing conduit to allow for installation of the new cable. The EIR states that settlement of the nearshore sandy sediments at and around the conduit is expected to be rapid and contained to the immediate area of the conduit, resulting in only minor impacts to marine water quality due to short-term turbidity increases. The pre-lay grapnel run, laying of the cable, jetting of sediments during cable installation, and use of the sea plow farther offshore will result in local and temporary increases in turbidity. The resuspended sediment along the cable corridor is expected to remain within three feet above the ocean floor and gradually re-settle within several hours. The project includes a commitment by AT&T that if required by the Regional Water Quality Control Board, AT&T will conduct chemical analytical testing of the current contents of the existing nearshore bore pipe to be used for the new cable, and of any proposed flush water prior to pipe preparation activities. These actions will ensure that the project will not violate California Ocean Plan water quality standards.

Federal and state regulations prohibit the discharge of sewage waste and other sanitary wastes that disperse rapidly in the water column. Resultant water quality impacts would primarily consist of an increase in organic suspended solids and the associated biological demand. In addition, discharge of bilge or ballast water could result in the introduction of non-native species into the local marine ecosystem. The EIR states that impacts from the discharge of ballast water into the marine waters of the project area could have potentially significant effects on water quality. While the EIR states that no ballast water discharges will occur within 12 miles of the shoreline, AT&T has modified the project to include a zero discharge policy for all project vessels (**Special Condition 9**). For all project installation and repair activities, there will be no marine discharge of sewage or bilge/ballast water from any project vessels.

The proposed cable is designed for a 25-year operational life. The outer coating of the cable that can be exposed to seawater consists of asphalt, a petroleum-based product that is often used in a wet environment or as a waterproofing material. Asphalt paving materials have been used as liners for water reservoirs for decades and also have been used to line potable water pipes and on pier pilings. Asphalt degrades slowly so that more asphalt will enter nearby sediments and the water column over time, and that leaching chemicals contained in the asphalt may bioaccumulate, although the effects of this degradation would be limited to the area immediately surrounding the cable. The slow degradation of the asphalt is not likely to add chemicals to the water column in quantities to violate any existing marine water quality standard.

No new construction is proposed for the onshore portion of the project. As a result, the potential for accumulation of waste materials subject to surface water runoff and discharge to marine waters is minimal. Nevertheless, AT&T has included in the project several measures to ensure that water quality in the project area is not adversely affected by terrestrial cable installation activities. These measures include: (1) the preparation and implementation of an erosion and sedimentation control plan as required by the County of San Luis Obispo; (2) the preparation of a storm water pollution prevention plan, if required by the Regional Water Quality Control Board; and (3) monitoring of all terrestrial erosion control areas during the subsequent rainy season to ensure that these areas remain properly stabilized to prevent erosion and degradation of downstream water quality.

As part of its consistency certification, AT&T agreed to implement in federal waters out to the edge of the continental shelf the requirements of **Special Conditions 3, 4, 6, 8-11, 14, 15, and 18**.

Conclusion

Based on the reasons discussed above, the Commission finds that the proposed project, as conditioned by **Special Conditions 3, 4, 6, 8-11, 14, 15, and 18**, in combination with the measures AT&T has agreed to implement in federal waters, will be carried out in a manner that maintains marine resources and sustains the biological productivity and quality of coastal waters and is therefore consistent with Coastal Act Sections 30230 and 30231.

4.7.3 Oil Spills

Coastal Act Section 30232 states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Because the project involves the use of ships with fuel tanks, an oil spill could occur in marine waters. The risk of a spill is highest if a vessel collision occurs or if a vessel runs aground. However, the chance of a spill occurring during this project is very low. While cable is laid and buried, the vessels will proceed along a predetermined, linear route, at a slow speed (0.5-1.0 knots). The opportunity for collision is remote. The vessel is also equipped with a Global

Positioning System and other navigation systems to further reduce the chances of a collision. To avoid subsurface navigation risks, AT&T conducted a seafloor survey to select an appropriate route that avoids high-relief rocky areas.

Coastal Act Section 30232 requires an applicant to undertake measures to prevent an oil spill from occurring. To minimize the chance of a vessel collision, AT&T has committed to posting notice at least 15 days in advance of cable-laying operations, in the local U.S. Coast Guard district's *Notice to Mariners*, about the pending cable-laying operations to ensure that mariners on commercial, recreational and military vessels will have prior notice. This notification is to include information such as the vessel name and radio call sign, size of vessel, schedule for project operations for specific areas, daily work hours of vessel operations, and 24-hour phone numbers for on-site project representatives. In addition, under the federal Submarine Cable Act (47 USC 21), fishing vessels and other ships must keep their equipment and vessels at the distance of one nautical mile from a vessel engaged in laying or repairing cable, or at least ¼ of a nautical mile from buoys intended to mark the position of a cable when being laid. The cable-laying vessel(s) will be well marked and well lighted during the night so that other mariners can see them.

Notwithstanding all efforts to avoid a collision, there is the possibility of an accident that could result in a spill. To provide protection against a spill, AT&T will develop a *Shipboard Oil Pollution Emergency Plan* (SOPEP) as required by the U.S. Coast Guard. This document contains oil spill preventive measures as well as procedures to be followed in the event of accidental spill. The cable laying vessel will carry onboard the required spill containment boom and absorbent materials as required by the SOPEP. The cable laying vessel will also have a small powered boat to rapidly deploy the absorption materials to collect any spill or cleanup resources to be used if the spill exceeds the cleanup capability of the cable laying ship. A lead vessel is responsible for overseeing all oil spill containment activities and is identified in the SOPEP of the cable ship. AT&T also is required to submit to OSPR a non-tank vessel oil spill contingency plan for the project's cable laying vessels because the work vessel is larger than 300 gross tons (14 CCR § 825.03-827.02). **Special Condition 16** requires AT&T, prior to commencement of marine cable installation operations, to submit evidence to the Executive Director that OSPR has approved the required non-tank oil spill contingency plan for this project.

In addition, AT&T will contract with an oil spill response organization for on-water containment and recovery. **Special Condition 17** of this permit requires AT&T, prior to commencement of offshore cable installation operations, to submit to the Executive Director a copy of a signed contract with an oil spill response organization ("OSRO") approved by the California Department of Fish and Game Office of Oil Spill Prevention and Response ("OSPR") for shoreline clean-up operations. With these measures in place and the imposition of **Special Conditions 16 and 17**, and implementation by AT&T of mitigation measures agreed to in its consistency certification, the Commission finds the project consistent with the oil and hazardous material spill prevention policies of Coastal Act Section 30232.

4.7.4 Environmentally Sensitive Habitat

Coastal Act Section 30240 states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Appendix F of the project EIR describes the existing biological resources of the project right-of-way (ROW):

The project area includes portions of Montana de Oro State Park, the Irish Hills, and the Los Osos Valley. Topography of the ROW is highly variable and includes coastal dunes, rolling hills, and steep slopes. Elevations range from near sea level in Montana de Oro to over 800 feet above sea level on peaks located south of Los Osos Valley Road. The ROW generally follows the ridgeline of the Irish Hills south of Los Osos Valley Road, and traverses a variety of major plant communities and residential, agricultural, and rural uses . . .

Plant communities and wildlife habitats found within and adjacent to the ROW and the project access roads include central dune scrub, central maritime chaparral, coastal scrub, riparian habitat, coast live oak woodland, eucalyptus woodland, annual grassland, and ruderal/disturbed areas. The EIR identifies two special-status plant and one animal species that are known to occur in the project ROW and that will likely be affected by the project:

Arroyo de la Cruz and Morro manzanita. The former is present along the ROW in coastal scrub and oak woodland habitats between MH 32.5 and M 36.5; the latter is present along the ROW from Hazard Canyon Road to MH 90F. Manzanita shrubs will not be removed as part of the project, but pruning of manzanita will be necessary for trail maintenance and repair and equipment access for cable pulling activities.

Morro shoulderband snail. Critical habitat for this species occurs in the immediate vicinity of MH 108 and MH 107.5F, and along the Rim Trail from Hazard Canyon Road to just west of MH 94F. Potential impacts would arise due to removal, driving on and over, and pruning vegetation along the cable route to provide access for trail maintenance and repair and equipment access for cable pulling activities.

In 1991 the County of San Luis Obispo approved the construction of the onshore cable conduit and manhole system from the Sandspit Beach parking lot eastward through Montana de Oro State Park and private lands to the existing AT&T cable station. This project was located partially within dune scrub, maritime chaparral, coastal scrub, and riparian habitats, all of which are Coastal Act environmentally sensitive habitats. The findings adopted by the County in that action (Permit No. D900132D) concluded that the fiber optic cable project was a permissible land use, would not have a significant effect on the environment, would restore disturbed areas to

the greatest extent feasible, included adequate mitigation measures to protect and restore sensitive biological resources, and was consistent with the environmentally sensitive habitat policies of the Local Coastal Plan. Subsequent to the original project, two additional cable installation projects were completed using the underground conduit and manhole system between Sandspit Beach and the San Luis Obispo cable station. In those actions, the County determined that no additional permitting was required as long as the original permit conditions were implemented for the protection of biological resources along the conduit right-of-way.

As with past cable installations into the existing conduit, vehicle and equipment access to the existing conduit system for the proposed cable installation will use the same combination of public and private trails and roads. No new access routes will be constructed nor will existing routes be improved or widened to install the fiber optic cable. The width of the existing “ridge route” corridor and access routes varies with terrain and sensitive habitat/species limitations. In general, the width of the routes ranges from 20 feet in areas with no restrictions to 10 feet within areas that support special status species habitat such as the Morro shoulderband snail.

The EIR documents anticipated impacts to environmentally sensitive habitat and other natural habitats within the project area:

The proposed Project involves re-disturbance of the existing terrestrial cable route to facilitate installation of the new cable system. The proposed Project is similar to the 1994 TPC-5 and 1998 China/US cable installation activities, and will utilize the same access routes, equipment, methods, and implement the same sensitive habitat avoidance and mitigation measures. No new construction or significant deviation from the previous projects' activities is proposed, other than the addition of the Twissleman Road access route, a private dirt/gravel road that begins at Prefuma Canyon Road and provides access to manholes 28.5 and 19 (refer to Figure 4.3-4). Twissleman Road provides a more direct route than previously-used access roads, and would reduce potential Project-related oak tree impacts. However, installation of the proposed cable system along the existing cable route has the potential to result in additional permanent loss and/or temporary disturbance of the plant communities existing within the Project area including central dune scrub, maritime chaparral, coast live oak woodland, and perennial grassland habitat areas.

The EIR further identifies specific access and work restrictions along the project route to protect sensitive habitat and species:

- Between manholes 96 and 92F, equipment will be restricted in size and type. Only equipment less than 75 in wide will be allowed to operate in this area.
- In the span between manholes 94 and 96 along the Rim Trail several lengths of eroded trail will be repaired, consisting of removing sediment from behind baffle boards, adding and extending baffle boards, and filling eroded areas using sediment from behind the baffle boards.
- Equipment restrictions and procedures due to sensitive habitat will be implemented between manholes 109F and 86, which includes the Rim Trail.

- Between manholes 79.5 and 74, the easement is restricted to foot traffic only to protect surface vegetation that has not completely reestablished since original construction in 1990.
- The easement across Los Osos Creek will not be used.

In addition, the project incorporates numerous mitigation measures to address potential impacts to ESHA and wildlife species dependent on such habitat, including limiting access and installation activities to the existing conduit right-of-way, mitigation monitoring plans, pre-construction surveys for sensitive species, staking of disturbance areas, exclusionary fencing, monitoring during all vegetation clearing, construction best management practices, and spill prevention and contingency plans.

The project includes a mitigation measure (MM TERBIO-2f) that specifically addresses protection of Morro shoulderband snail habitat along the project corridor. This measure states that AT&T shall provide an approved *USFWS Incidental Take Permit and Habitat Conservation Plan* or other appropriate authorization (e.g., a “no-take” letter) that identifies the conservation measures that AT&T agrees to implement as conditions of project approval to avoid and/or minimize impacts to the Morro shoulderband snail during project operations. As in previous cable installation projects into the existing conduit system, AT&T expects to receive a “no-take” letter of authorization from the USFWS for the proposed project. However, the EIR states that:

If an Incidental Take Permit/Habitat Conservation Plan is required, it will document methods of relocation of Morro shoulderband snails from work areas and mitigating temporary impacts to Morro shoulderband snail critical habitat elements (i.e., coastal dune scrub). This shall include a letter of agreement from State Parks approving the final provisions of the proposed Morro shoulderband snail mitigation site within Montana de Oro State Park as illustrated on Figure 4.3-1. All measures of any Habitat Conservation Plan or other appropriate USFWS authorization specific to the Project shall become Conditions of Approval.

The project incorporates all of the mitigation measures addressing protection of natural habitats from the 1991 County coastal development permit for construction and subsequent use of the cable conduit and manhole system. In addition, AT&T will adhere to several new mitigation measures to further reduce or eliminate construction-related impacts to environmentally sensitive habitat areas in the project area, including: (1) using alternate access routes to avoid oak trees; (2) using a certified arborist to perform any necessary trimming of oak tree branches; (3) monitoring all erosion repair and sediment control work sites during three significant storm events during the subsequent rainy season to ensure that these sites remain stable; and (4) repairing any erosion control deficiencies and monitoring those repairs during the following rainy season.

The Commission acknowledges that the proposed project is similar to previous cable installation projects that have used the existing underground conduit and manhole system. The proposed cable project requires the use once again of existing trails and roadways, on public and private lands that, in part, pass through environmentally sensitive habitat areas. In some locations,

installation will require trimming and/or trampling of vegetation that extends into existing trails and roadways, and the repair of eroded sections of the Rim Trail in Montana de Oro State Park. The multi-purpose nature of the project – maintaining access to the existing conduit manholes to allow cable installation, maintaining and repairing a public access trail in the State Park, and maintaining access along existing ranch roads on private lands along the project right-of-way – requires periodic but less-than-significant impacts to environmentally sensitive habitat. The proposed activities will improve access to recreational trails and will not significantly disrupt or degrade the ESHA located in the project site. The proposed repair, maintenance, and access activities are similar to work done along the project right-of-way by the applicant in 1994 and 1998. Likewise, the expected impacts to environmentally sensitive habitat from the project activities are similar to and no greater than those generated by previous projects (environmentally sensitive habitat has continued to thrive adjacent to the subject trails and roads). The project includes habitat avoidance and mitigation measures and oversight by the U.S. Fish and Wildlife Service to ensure that the endangered Morro shoulderband snail and its habitat are protected during project operations. The Commission therefore finds that the proposed AT&T fiber optic cable installation project is consistent with the environmentally sensitive habitat policies of Section 30240 of the Coastal Act.

4.7.5 Commercial and Recreational Fishing

Coastal Act Section 30234.5 states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

Commercial fishing is an important component of the regional economy in San Luis Obispo County and is conducted out of two ports: Morro Bay and Port San Luis/Avila. The project area, for purposes of commercial fishing, is defined as the ocean waters and seafloor within Estero Bay from the shoreline to approximately 60 miles offshore. Commercial catch data are reported by the California Department of Fish and Game from “fish blocks,” each fish block covering an area of marine waters of approximately 100 square nautical miles. The numbered fish blocks are areas within which fish catch is reported by commercial buyers and recreational fishing vessels. The proposed cable corridor is encompassed by six fish blocks (numbered 615, 616, 617, 618, 619 and 620).

Approximately 250 commercial fishing vessels regularly use the Morro Bay and Port San Luis/Avila harbors, with fewer than 15 percent being trawlers. Over the past 10 years, the numbers of trawlers within the Morro Bay/Avila harbors has decreased, and currently commercial fishing in this area targets a variety of species ranging from crab and shrimp to rockfish, pelagic species and sharks. Gear types used to catch these resources include trawl, gill net, trap, diving, round-haul nets, and hook-and-line. Recent fish block data suggests that surface-oriented fishing for squid and commercial trapping for crabs and sablefish contribute the most pounds of seafood from these regional fish blocks.

Recreational fishing in the area is predominantly by hook-and-line. Rocky headland areas in the Point Buchon area are fished for rockfish, lingcod, and cabezon. Other target species in this area include barracuda, bonito, and white sea bass. Trolling for salmon occurs parallel to shore out to depths just over 300 feet from near Point Sal to Cayucos. Fishers on charter boats also troll for albacore farther offshore.

Potential Project-Related Impacts

Commercial fishing will be precluded from the cable installation corridor and safety zone during marine activities associated with cable installation. While the duration of these activities will vary along the 50-mile long cable corridor, in-water activities could take a total of 16 weeks. Temporary economic impacts to fishermen therefore could result during cable installation. Pursuant to the federal Submarine Cable Act (47 U.S.C. 21 §24), all vessels are required to maintain a distance of at least one nautical mile from a vessel laying or repairing a cable and one-quarter mile from the buoy of a vessel intended to mark the position of a cable when being laid or out of order². However, de facto preclusion created by all cable installation activities will be temporary and in constant motion as the cables are being laid and/or buried so there will be sufficient access to other fishing and boating areas in the project area. Moreover, once the cables are buried, there will be unrestricted access to these areas. Fishing could occur at locations within the route, but away from the cable-laying vessel(s), throughout the installation period. Therefore, a temporary fishing preclusion zone should not be a significant impact to commercial and recreational fishermen.

To minimize any potential conflicts with commercial and recreational fishing activities, at least 15 days prior to commencement of offshore construction activities, AT&T will file an advisory of pending offshore construction operations, including all vessel activities, work locations, and schedules, with the local U.S. Coast Guard District Office for publication in the Local Notice to Mariners. AT&T will also provide the same notice directly to the harbor masters in ports near the affected areas, such as Morro Bay and Port San Luis and the Morro Bay and Port San Luis Commercial Fishermen's Associations, so that mariners and recreational fishing vessels will be informed of offshore project activities and vessels at all times.

Once a cable is laid, fishing gear could snag cable segments that are insufficiently buried or exposed on the seafloor, resulting in gear damage or loss. If gear is snagged and lost, fishermen would incur financial losses from abandoned gear and lost fishing time.

Measures to Reduce Fishery Conflicts

AT&T will mitigate potential fishing conflicts and effects through a number of measures. Most importantly, AT&T will bury the cable to a target depth of one meter in State waters and out to the 1,000-fathom water depth in federal waters, where feasible. AT&T believes it can bury the cable along 92% of the cable route. Buried cable will minimize the potential for fishing gear entanglement and gear damage or loss.

² Fishermen who willfully or negligently snag and damage cables can be imprisoned or be subject a maximum fine of \$5,000 under the federal Submarine Cables Act (47 U.S.C. 21).

Special Condition 3 of this permit requires each cable to 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, AT&T shall bury the cables to the maximum depth feasible. Along portions of the route where cable burial is precluded by seafloor substrates, AT&T will implement a “Cable Slack Management Plan” to eliminate suspended cable over seafloor areas of high relief (**Special Condition 4**). If a cable is suspended over the seafloor, there is a greater chance of fishing gear snags and entanglements. During cable surface-lay operations, AT&T shall employ a ROV-follow vessel with real-time ROV video feed to the cable ship to identify any areas of cable suspension. If the ROV video feed identifies a suspended segment of cable that can be minimized or eliminated by repositioning or introduction of additional cable slack, AT&T shall recover the suspended cable and reinstall it.

The Commission is also requiring in **Special Condition 5** that during the marine cable installation phase of the project, AT&T submit to the Executive Director, the US Coast Guard (for publication in a *Notice to Mariners*), and the signatories of a Fishing Agreement (described below), weekly notices containing preliminary as-built coordinates of any unburied or exposed sections of cable. AT&T shall also make radio broadcast announcements on the local fishers’ emergency radio frequency that provide the current cable installation location and a toll-free number that can be called for additional information.

Special Condition 6 requires AT&T, within 45 days of completion of cable installation, to submit to the Executive Director, members of the Central California Joint Cable/Fisheries Liaison Committee, the Morro Bay Fisherman’s Association, the Port San Luis Fisherman’s Association and individual fishermen not represented by a fishing association electronic and hard copy as-built plans overlaid on NOAA navigation charts.

In **Special Condition 7**, the Commission is requiring AT&T, within 60 days of completing cable installation, to submit to the Executive Director a final cable installation report that includes a summary of cable installation and cable slack methods used; identification of any areas of cable suspension greater than 1.0 meter above the seafloor; an evaluation of the consistency of cable installation with AT&T’s project description and conditions of this permit; and a description of any observed fishing activity during the pre-lay and cable installation project phases. **Special Condition 13** requires AT&T, within 60 days of completion of cable installation, to submit evidence to the Executive Director that AT&T has submitted to NOAA the geographical coordinates of the cable as-built plans using a Differential Geographic Positioning System unit or comparable navigational equipment so that NOAA can update its navigational charts for this area of coast.

To make sure that buried cable remains buried, the Commission is also requiring in **Special Condition 8** that every 12 to 24 months, for a total of two times during the first four years of the project, and then every five years thereafter (unless otherwise determined by the Executive Director based on a finding that portions of the cable route have not remained buried), AT&T shall survey the cable routes from the mean high tide line to the seaward limit of state waters to verify that the cables have remained buried consistent with the as-built cable burial plan required by Special Condition 6. The survey shall be conducted by a third party, approved by the

Executive Director, using a remotely operated vehicle (“ROV”) equipped with video and still cameras . Within 30 days of survey completion, AT&T is required to submit a report describing the results of the survey. If the survey shows that a segment(s) of a cable is no longer buried consistent with the as-built cable burial plan, AT&T shall, within 30 days of survey completion, submit to the Executive Director for approval a plan to re-bury those cable segments. Upon approval of the plan by the Executive Director, AT&T shall proceed to implement the plan in accordance with the time schedule specified therein.

For cable repairs or cable re-burial, AT&T shall provide notice of such proposed repair or re-burial in writing (**Special Condition 12**) to the Executive Director and in a US Coast Guard Notice to Mariners 15 days prior to any cable repair or maintenance activity, or as soon as possible for any emergency repairs.

Within 90 days of either taking a cable out of service or after the expiration or termination of AT&T’s SLC lease and permits, whichever is earlier, the Commission is requiring AT&T in **Special Condition 14** to apply for an amendment to this permit to remove the cables from the seafloor.

AT&T proposes in its consistency certification to implement the requirements of **Special Conditions 3-8 and 12-14** out to the edge of the continental shelf. With implementation of these measures, the Commission believes project-related impacts to commercial and recreational fishermen will be minimized.

AT&T is also a signatory to a January 30, 2002 agreement with fishermen, including individual fishermen operating out of Morro Bay and Port San Luis, and two mutual benefit associations: The Morro Bay Commercial Fishermen’s Organization, and the Port San Luis Commercial Fishermen’s Association (“the Fishing Agreement”). The Fishing Agreement provides a host of preventive and mitigation measures designed to avoid conflicts between the cable and fishing industries. It requires AT&T in part to:

- Distribute documentation of cable location and burial depth after installation to assure that accurate positions and depths are known to fishermen and other interested parties;
- Establish a Joint Cable/Fisheries Liaison Committee (JCFLC), comprised of four fishermen and four cable company representatives to facilitate inter-industry communication, coordination and cooperation between the commercial fishing industry of Central California and undersea fiber optic telecommunications companies operating in California;
- Fund a Committee/Liaison Office Fund to the amount of \$50,000 annually per company, with funds in excess of \$150,000 being transferred to the Commercial Fishing Industry Improvement Fund. This fund is used to reimburse Committee members for participation, to compensate any segments of the commercial fishing industry damaged as a result of the act of installing, repairing, replacing or maintaining the cable project;
- A 24-hour hotline to take calls from fishermen who believe they have snagged their gear on the telecommunications cables owned or operated by the particular cable company;

- Pay 100% of the costs of gear sacrificed by fishermen as a result of snagging cable and 50% of the gear's value to settle claims for loss of business incurred by the fishermen provided 1) the fisherman has informed the 24-hour toll-free telephone hotlines of its situation; and 2) the fisherman's conduct was consistent with the Fishing Vessel Operating Procedures established pursuant to the Fishing Agreement;
- Release any claims the cable company might otherwise have against individual fishermen and refrain from taking any administrative, legal, or other action to sanction and/or recover damages against fishermen who comply with terms and conditions of the Fishing Agreement;
- Assume all liability, responsibility, and risk for any damage which may occur to their cables resulting from their inability to construct, maintain, place, and continue those cables in a manner which does not interfere with traditional fishing operations;
- Abandon and remove out-of-service cables, as a condition of any government approvals, so as not to interfere with commercial fishing activities in the areas where such cables were previously installed;
- Annually deposit \$100,000 per project in a special fund for the enhancement of commercial fisheries and the commercial fishing industry and support facilities. The payment of such ordered mitigation shall be offset by funds paid pursuant to this paragraph; and
- Pay \$500 to each licensed fisherman who signs the Fishing Agreement for use in upgrading communication and navigation equipment.

With implementation of all the above-described measures, the Commission believes the economic and commercial importance of fishing activities will be protected and thus finds the project consistent with Coastal Act Section 30234.5.

4.7.6 Public Access and Recreation

The Coastal Act provides the following:

Section 30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212(a). Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) Adequate access exists nearby

Section 30214(a). *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

Section 30220. *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30223. *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

The initial onshore portion of the project is located within an existing cable right-of-way in Montana de Oro State Park. (East of the park boundary the cable alignment enters unincorporated private lands in San Luis Obispo County, with access limited to property owners.) Potential project impacts within the park would occur at the Sandspit Beach parking lot (site of the existing submarine cable landing manhole) and along the Horse and Rim trails (site of the existing underground conduit and manhole system into which the proposed cable would be installed). The parking lot, located one mile west of Pecho Valley Road (the primary access road into the park) contains approximately 50 parking spaces, a public telephone, picnic tables, restrooms, and is the starting point of a boardwalk and trail to Sandspit Beach, an area popular with surfers and beachgoers. The Horse/Cable and Rim trails are popular hiking and equestrian trails which head generally eastward from Pecho Valley Road into the valleys and ridgelines of the park, affording excellent views of the coast and intervening topography.

The project EIR states that:

As specified in previously-obtained fiber optic cable projects within the area, AT&T has completed public facility enhancements within Montana de Oro State Park to address impacts associated with the original installation of the conduits within the Sandspit Beach parking lot. The proposed project will temporarily block access to a portion of that parking lot; however, these impacts have been previously addressed. The proposed project is potentially consistent with [Coastal Act Policy 30212.5] as mitigation has already been successfully implemented.

The proposed Project will temporarily affect use of part or all of the Sandspit Beach parking lot in Montana de Oro State Park, which will be used as a staging area for installation activities along the existing conduit route. During installation, all of the parking lot will be closed for up to an estimated three days during cable pulling operations. Furthermore, partial lot closures will occur for up to two weeks. Visitors that would have used the Sandspit Beach parking lot are expected to park in the turnouts along Pecho Valley Road, at the horse camp turn-around, or select alternative parking locations such as Hazard Canyon and Spooner's Cove.

If the proposed Project's need for the parking lot coincides with a period of heavy visitor use of the Park, recreational activities could be disrupted by limiting parking or beach access. Other direct impacts to recreational resources in this segment include the temporary loss of easy access for visitors along a beach and bluff area that is up to 2 miles (3.2 km) long associated with Sandspit Road access. Users of this area include hikers, surfers, surf fishermen, equestrians, picnickers, kayakers, and hang gliders. Visitors also use this area for passive recreational activities such as beach strolling, bird watching, and sight seeing.

In addition, AT&T states and the California Department of Parks and Recreation confirms that the Horse and Rim trails within the State Park will be closed for up to one week for cable installation and trail repair, maintenance, and restoration work. The work along the Rim Trail includes installing the fiber optic and power cables into the existing, underground conduit along the trail corridor, as well as repairing and restoring a steep and eroded section of this trail.

State Parks reports that the Rim Trail is "heavily rutted and eroded due to the sandy soil conditions, equestrian use, steep topography, and poor drainage. The baffle boxes along the route are only partially effective, in need of repair, and AT&T does appear to have a plan to repair the baffle boxes and install at least two more." (electronic mail from D.Barker, CDPR, to L. Simon, CCC, 1-23-09.) Currently, the project schedule calls for the submarine cable to land at the Sandspit Beach parking lot manhole on Monday April 13 (or Tuesday April 14), requiring the closure of the parking lot that day and possibly the following day. Partial closure of the parking lot (estimated to include 12-15 of the 50 parking spaces) would occur during the week before and the week after the cable landing. The closure of the Horse and Rim trails within the State Park is currently scheduled to occur the last week in March but could occur one to two weeks prior, depending on the rate of cable installation moving westward from the cable station. Initially, the cable landing was to occur on Sunday April 12 (Easter Sunday) but was rescheduled to the following day at the request of State Parks as Easter weekend is one of the busiest weekends at the park during the spring season.

State Parks commented on the DEIR as follows:

As outlined in the draft EIR and corroborated in discussions with AT&T staff, the Sandspit parking lot will need to be fully closed on cable landing day and partially closed for cable pulls, which will significantly impact visitor access to the sand spit beach and nearby trails. Also, the staging of cable pulling equipment along the cable route and adjacent to the manholes will result in trail closures from location MH96 and eastward from that location.

These closures and partial closures will impact trail users, specifically equestrians, hikers, and beach goers. The proposed timing of the project on or around Easter weekend will impact the park at one of the busiest times of the year when school children are on vacation. All of the above operational impacts will need to be addressed with a written plan and appropriate mitigation.

...

Project activities include trimming, trail work, and the movement of equipment and personnel along the cable route, and accessing the easement from park lands will have direct, foreseeable impacts to the trail surface and surrounding vegetation. It will be necessary to mitigate these impacts by repairing the ridge trail . . . With regard to the ridge trail, the wear and tear along the trail route resulting from the movement of equipment and personnel, the poor condition of the baffle boxes, and the resulting erosion to the trail head will require trail remediation and restoration to a permanent, sustainable condition that can better withstand erosion and future access and use.

The proposed project includes the following mitigation measures to address potential adverse project effects on public access and recreation:

MM REC-1a: Notifying the California Department of Parks and Recreation. Prior to cable installation, AT&T shall submit a plan and obtain the approval from the California Department of Parks and Recreation (CDPR) for the scheduling and locating of Project activities at the Sandspit Beach parking lot, and access routes and staging areas along the Ridge Conduit system within State Parks land, incorporating measures to ensure the availability of offsite parking, restrooms, fire prevention and spill prevention/control measures, and pedestrian access to the beach during Project activities. AT&T shall submit documentation of the approval to the Executive Officer of the California State Lands Commission (CSLC) prior to Project initiation.

MM REC-1b: Posting Signage. Prior to construction within the Sandspit Beach parking lot, AT&T shall coordinate with the California Department of Parks and Recreation and the County Department of Public Works to provide signage along Pecho Valley Road redirecting visitors to park at one of the other designated parking areas. In addition, AT&T shall post signage in the Sandspit Beach parking area alerting visitors that the lot will be closed or partially closed, the length of time, and the location of alternate parking areas.

MM TERBIO-3c: Trail Enhancement Plan and Erosion Control Monitoring. To ensure that the Rim Trail is remediated to a permanent, sustainable condition as required by CDPR, AT&T shall develop a Trail Enhancement Plan which emphasizes repair and restoration of the trail to current CDPR standards. The Trail Enhancement Plan would be prepared by AT&T for review and approval by CDPR prior to project implementation . . .

The Commission finds that the proposed cable installation activities will adversely affect public access and recreation in Montana de Oro State Park, albeit for a short period of time but nevertheless during the heavily-used Easter/spring vacation period in mid-April 2009. Closure

of the Rim Trail for approximately one week and complete and partial closure of the Sandspit Beach parking lot over a two- to three-week period are unavoidable impacts associated with the need for AT&T to access the existing trails, roads, and manholes to install the Asia America Gateway fiber optic cable. As discussed above, the proposed project includes mitigation measures designed to reduce the significance of project impacts.

The Commission staff suggested that AT&T reschedule the cable installation work to avoid the spring vacation time period in April and further reduce the level of access and recreation impacts. AT&T responded that additional postponements (beyond the aforementioned one- or two-day postponement of the cable landing at the Sandspit Beach parking lot) was not feasible given their need to complete the project in as short a time period as possible. However, after further discussions between representatives of AT&T and the Commission staff, AT&T agreed to incorporate the following additional public access and recreation mitigation measure into the proposed project as a means of addressing the trail and parking lot closures:

Within 60 days of completion of the terrestrial cable installation, AT&T shall compensate for project-related public access and recreation impacts through payment of \$55,000 (“Mitigation Fee”) to the State of California Department of Parks and Recreation (“Department”) or San Luis Obispo County, as determined by the Executive Director. The Mitigation Fee shall be used by the Department for public access and recreation improvements at Montana de Oro State Park, or to postpone by at least one year implementation of a Department proposed user entry fee at Montana de Oro State Park (after imposition of such fee has been approved and is scheduled to be implemented), in accordance with the terms and conditions of a Memorandum of Agreement between the California Coastal Commission and the California Department of Parks and Recreation or San Luis Obispo County.

The memorandum of agreement between the Commission and State Parks has yet to be drafted but it would include potential uses for the Mitigation Fee to improve public access and recreation in Montana de Oro State Park, should the postponement of the proposed user entry fee not be feasible. These alternate uses of the Mitigation Fee include but are not limited to construction of or improvements to the California Coastal Trail route in the park, improvements to existing coastal or inland trails in the park, or trail access within the newly-acquired Irish Hills portion of the park. With incorporation of the Mitigation Fee into the proposed project by AT&T, along with the other aforementioned mitigation measures, the Commission believes that public access and recreation in Montana de Oro State Park will not be adversely affected by cable installation activities, and that the project is consistent with the public access and recreation policies of the Coastal Act (Sections 30210, 30212(a), 30214(a), 30220, and 30223).

4.7.7 Cultural Resources

Coastal Act Section 30244 states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures

shall be required.

The project EIR states that historical and cultural resources are defined as those areas of the environment that possess historical, cultural, archaeological or paleontological significance, including sites, structures, or objects significantly associated with, or representative of earlier people, cultures and human activities and events. Of concern in the project area is the potential for cable-laying activities to disturb or damage shipwrecks of potential cultural resource value, and to disturb onshore cultural resources due to cable installation activities and construction of the grounding bed at the existing AT&T San Luis Obispo Cable Station.

The project EIR states that:

In general, the cable route for the proposed Project has been designed to avoid previously-recorded maritime resource locations (shipwrecks) identified by the CSLC and the MMS (Pierson, et al. 1987, Gearhart et al. 1990). To date no intact inundated or buried prehistoric sites have been located off Morro Bay. South of the Project area, at Avila Beach, one isolated artifact was identified in a water depth of less than 100 ft (31m).

However, the EIR also states that cultural resources may occur in the project area buried within unconsolidated sediments, which could be damaged or destroyed during the pre-lay grapnel run or during the cable burial process. As a result, AT&T has incorporated mitigation measures into the project that require a detailed marine archaeological resource assessment along the cable route, and modification of the cable route or installation procedures should significant resources be discovered.

The EIR states that certain areas of the onshore project corridor pass through landscapes known to contain abundant cultural resources. However, the proposed onshore cable would be placed within an existing underground conduit and manhole system and as such does not involve ground disturbance activities except at two locations: the Sandspit Beach parking lot and the AT&T cable station:

The proposed Project would involve only limited amounts of trenching at the Sandspit Beach parking lot, an area previously disturbed by construction of the parking lot and access road in 1991 by AT&T during the Hawaii to San Luis Obispo cable project (Morro Group 1991). Additionally, the proposed Project proposes to install a grounding bed at the existing AT&T San Luis Obispo Cable Facility. The grounding bed will consist of drilling a series of holes in a designated pattern, installing grounding rods within each hole and backfilling each hole. This will result in a minor disturbance to the subsurface and would not be expected to yield any valuable information regarding paleontological resources.

To minimize potential adverse impacts on undiscovered cultural resources in the onshore project area, AT&T has incorporated mitigation measures into the project, including development of a cultural resource monitoring plan, a pre-construction meeting between the project archaeologist and the construction crew, cultural resource monitoring during ground disturbance activity, and the suspension of construction should any cultural resources be discovered.

The offshore segment of the proposed project is located in an area currently used as a corridor for submarine fiber optic cables, and the potential for adverse effects on cultural resources along the cable route is minimal. The terrestrial segment of the project will use an existing underground conduit and manhole system; new ground disturbance of a minor nature will occur at two currently developed sites, the Sandspit Beach parking lot and the AT&T cable station. The Commission thus finds that with the incorporation of cultural resource protection measures into the proposed project, the project would not adversely affect cultural resources and will be consistent with Coastal Act Section 30244.

4.7.8 Air Quality

The Coastal Act contains several air quality requirements. Coastal Act Section 30253(3) requires new development to:

Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.

Coastal Act Section 30414 provides:

- (a) The State Air Resources Board and air pollution control districts established pursuant to state law and consistent with the requirements of federal law are the principal public agencies responsible for the establishment of ambient air quality and emission standards and air pollution control programs. The provisions of this division do not authorize the commission or any local government to establish any ambient air quality standard or emission standard, air pollution control program or facility, or to modify any ambient air quality standard, emission standard, or air pollution control program or facility which has been established by the state board or by an air pollution control district.*

- (c) The State Air Resources Board and any air pollution control district may recommend ways in which actions of the commission or any local government can complement or assist in the implementation of established air quality programs.*

In addition, section 307(f) of the Coastal Zone Management Act (CZMA; 16 USC §1456(f)) includes as enforceable policies of the California Coastal Management Program requirements established by the Clean Air Act (CAA; 42 USC §7401 *et seq.*), and requirements established by the federal government or by any state or local government pursuant to the Clean Air Act. Therefore, to concur in AT&T's consistency certification, the Commission must find that the proposed project to which it pertains will meet federal Clean Air Act requirements.

Air quality is determined by measuring ambient concentrations of air pollutants that are known to have adverse health effects. The federal Clean Air Act designates seven criteria pollutants for which primary and secondary National Ambient Air Quality Standards ("NAAQS") have been promulgated. Primary standards are designed to protect public health. Secondary standards are

set to protect public welfare, including protection against decreased visibility and damage to animals, crops, vegetation and buildings. The seven criteria pollutants are:

- Carbon monoxide (CO)
- Lead (Pb)
- Nitrogen dioxide (NO₂)
- Ozone (O₃)
- Particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM₁₀)
- Particulate matter with an aerodynamic diameter less than or equal to 2.5 microns (PM_{2.5})
- Sulfur dioxide (SO₂)

The State of California has established additional or more stringent ambient air quality standards for some of these criteria pollutants, as well as ambient air quality standards for sulfates, hydrogen sulfide (H₂S), vinyl chloride, and visibility-reducing particles.

Section 107(d) of the Clean Air Act requires that areas within a state be designated as either attainment, non-attainment, or unclassifiable with respect to the NAAQS on a pollutant-specific basis. Attainment designations are given to areas within a state that meet the NAAQS for a given pollutant. Non-attainment designations are given to areas within a state that either does not meet the NAAQS or that contribute to ambient air quality in a nearby area that does not meet the NAAQS. Unclassifiable areas are those areas within a state that cannot be classified on the basis of available information as meeting or not meeting the NAAQS. See 40 CFR § 81.305. The federal government may delegate its Clean Air Act authority to individual states when states demonstrate the ability to implement the federal program. California has such delegated authority, which is implemented through local air pollution control districts (“APCDs”). The U.S Environmental Protection Agency (“EPA”) has approved a State Implementation Plan (“SIP”) for the State of California.

The proposed project would be located within the South Central Coast Air Basin in San Luis Obispo County and within the jurisdiction of the San Luis Obispo APCD (“SLOAPCD”). Emission control strategies are codified into SLOAPCD rules and regulations. The rules and regulations may limit emissions and also specify emission controls and control technologies for each type of emitting source. Ambient air quality in the County is generally good (i.e., within applicable ambient air quality standards) with the exception of particulate matter with an aerodynamic diameter of ten microns or less (PM₁₀), and ozone (O₃).³

In 2003, SLOAPCD published a CEQA Air Quality Handbook to assist agencies and applicants in analyzing and mitigating project-specific air quality impacts. This handbook provides standards, methodologies, and procedures for conducting air quality analyses in environmental impact reports. In it, SLOAPCD established CEQA thresholds for the emissions of air pollutants caused by construction activities. If these thresholds are exceeded, mitigation measures, including offsets, may be required.

³ Ozone is not emitted directly from emission sources, but is created at near-ground level by a chemical reaction between nitrogen oxides (NO_x) and reactive organic compounds (ROC) in the presence of sunlight. As a result, NO_x and ROC are often referred to as ozone precursors.

Installation of the proposed cable generates emissions through the use of marine vessels during placement and burial of the cable, construction equipment during shore end and land-based activities, from on-road haul trucks and from vehicles used by construction workers commuting to and from the project site. Overall, construction is anticipated to occur during a one or two calendar quarter period.

The main concern here is emissions of NO_x, an ozone precursor. For this project, total NO_x emissions within “California Coastal Waters”⁴ would be 9.8 tons. Under SLOAPCD’s CEQA thresholds, emissions exceeding 2.5 tons per single calendar quarter, but less than 6 tons, require implementation of Best Available Control Technology (BACT). AT&T must implement BACT for all NO_x emissions exceeding 2.5 tons per quarter. SLOAPCD’s CEQA thresholds also require the purchase of offsets for NO_x emissions that exceed 6 tons per single calendar quarter. For this project, AT&T will be required to offset 3.8 tons of NO_x. AT&T will provide funding to SLOAPCD, in an amount to be determined by SLOAPCD, to provide emission reductions from sources that are traditionally not regulated. For example, funding may be used to upgrade or replace existing engines in agricultural operations or other local marine operations. The Commission is requiring in **Special Condition 20** that prior to commencement of marine operations, AT&T submit evidence to the Executive Director that AT&T has satisfied SLOAPCD’s BACT requirements. Within 60 days of completing marine cable installation, AT&T must submit evidence of having provided to SLOAPCD adequate funding to implement emission reduction projects to offset project construction-related NO_x emissions as required by SLOAPCD CEQA thresholds.

Projected cable operational emissions (e.g., inspections, repair and maintenance activities) are not expected to exceed SLOAPCD significance thresholds and therefore SLOAPCD will not require offsets.

For the above-described reasons, the Commission finds that with the imposition of the conditions of this permit, and with implementation by AT&T of the mitigation measures agreed to in its consistency certification, the proposed project will comply with the rules and regulations of SLOAPCD as required by Coastal Act Section 30253(3) and in doing so meet federal Clean Air Act requirements.

4.7.9 Climate Change

The Coastal Commission also considered the potential effects of this project on climate change. The construction and operation of major water, energy, telecommunication, and

⁴ The California Air Resources Board (CARB) has defined California Coastal Waters as extending approximately 25 to 100 miles from the California coastline (17 CCR §70500). CARB has determined that pollutant emissions released over these waters are likely to remain close to the surface and be transported to the California coast and inland under prevailing summertime conditions. At this location, California Coastal Waters extend 39 miles from shore.

transportation projects can significantly increase greenhouse gases (GHG)⁵ and global warming, which in turn can cause significant adverse impacts to coastal resources of California. The Coastal Act has a number of provisions that provide direct authority to take steps to reduce climate change and to adapt to the effects of global warming. These include the Coastal Act's public access and recreation policies (Sections 30220 and 30211), marine resource and water quality policies (Sections 30230 and 30231), the environmentally sensitive habitat area protection policy (Section 30240), and the coastal hazards policy (Section 30253(1) and (2)). Further, Section 30253(4) requires development to minimize energy consumption and vehicle miles traveled.

In September 2006, Governor Arnold Schwarzenegger signed AB 32, the California Global Warming Solutions Act of 2006. In passing the bill, the California Legislature found that *“Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems”* (California Health & Safety Code, Division 25.5, Part 1).

AB 32 requires the California Air Resources Board (CARB) to adopt a statewide GHG emissions limit equivalent to the statewide GHG emissions levels in 1990 to be achieved by 2020. It requires CARB to adopt rules and regulations to achieve the maximum technologically feasible and cost-effective GHG emission reductions. Strategies that the state will pursue for managing GHG emissions focus on generally reducing consumption of petroleum across all areas of the California economy. Improvements in transportation energy efficiency (fuel economy) and alternatives to petroleum-based fuels are to provide substantial reductions by 2020.

Climate change covers a broad range of impacts that can occur due to GHG emissions, such as increased sea level rise, changes in the frequency, intensity or occurrence of heavy precipitation and droughts, changes in the frequency and intensity of extreme temperature events, and changes in ocean water chemistry. California's 2006 Climate Change Impacts Assessment, reports by the Intergovernmental Panel on Climate Change (IPCC Reports in 1990, 1995, 2001 and 2007) and various climate research centers (such as the Pew Center on Global Climate Change and the Heinz Center) recognize that within the coming century potentially severe impacts could occur in the areas of sea level, water resources, agriculture, forests and landscapes, and public health. Many of these effects will impact the coastal zone and resources specifically protected by the Coastal Act, including impacts to air quality, species distribution and diversity, agriculture, expansion of invasive species, increase in plant pathogens, alteration of sensitive habitat, wildfires, rising sea level, coastal flooding, and coastal erosion. In addition, absorption of carbon

⁵ Greenhouse gases are any gas, both natural and anthropogenic, that absorbs infrared radiation in the atmosphere and include water vapor, carbon dioxide (CO₂), methane (CH₄), and nitrous oxide (N₂O). These greenhouse gases lead to the trapping and buildup of heat in the atmosphere near the earth's surface, commonly known as the “Greenhouse Effect.” Carbon dioxide is the major anthropogenic greenhouse gas. All greenhouse gases are quantified collectively by the carbon dioxide equivalent, or the amount of CO₂ that would have the same global warming potential, when measured over a specific time period.

dioxide by the ocean leads to a reduction in ocean pH with concomitant consumption of dissolved carbonate ions, which adversely impacts calcite-secreting marine organisms (including many phytoplankton, zooplankton, clams, snails, sea stars, sea urchins, crabs, shrimp, and many others). The most direct impacts of global warming focused on the coastal zone are sea level rise and its associated impacts, ocean warming, and ocean acidification.

Sea Level Rise

Sea level rise is one of the most direct consequences resulting from climate change and a general warming of the atmosphere. In turn, a change in sea level is one of the main factors causing changes in coastal processes. An increase in sea level can:

- Increase coastal wave energy
- Increase beach and bluff erosion
- Increase coastal flooding and inundation
- Increase scour around foundations
- Reduce the effectiveness of existing coastal protection efforts
- Reduce the expected effective life of development setbacks
- Reduce dry beach area and threaten beach-level access and recreational use
- Reduce access time for beaches that are only accessible now at low tide
- Shift the intertidal location inland; possibly reduce intertidal area

Due to the many ways that rising sea level can influence development on the coast, the Commission has, for many years, considered future sea level in the planning and design of many coastal projects. Consequences of an increase in sea level such as increased erosion and scour, increased nearshore wave energy and reduced beach area are all detrimental to the coast and damaging to coastal resources. The greater the rise in sea level, the greater the possible detrimental consequences to the coastal resources directly effected by sea level rise. There are no models that can attribute specific changes in sea level to specify amounts of GHG emissions; nevertheless, there are clear indications that increases in GHG emissions contribute to the overall increase in climate change, rising sea level and resultant impacts to coastal resources.⁶

Ocean Warming

One of the well-recognized connections between the atmosphere and the ocean is heat exchange. Global warming of the atmosphere is expected to cause an increase in ocean warming as the ocean absorbs greater amounts of thermal energy from the atmosphere. One of the consequences of ocean warming is a shift in the geographic ranges of species. With continued warming, species can be expected to continue to migrate northward as long as suitable habitat is available. An indirect consequence of ocean warming is a decline in ocean productivity due to habitat shifts. Ocean warming can cause a direct loss of primary productivity as well. Warming of the surface of the ocean results in increased ocean

⁶ Recent discussions of atmospheric temperature, ocean temperature and sea level rise from combustion of fossil fuels and other anthropogenic sources of greenhouse gases and their effects can be found in the reports from the IPCC (1990, 1992, 1995, 2001, 2007; www.ipcc.ch/index.html).

stratification, limiting the upwelling of deep, nutrient-rich waters that are responsible for California's rich coastal productivity.

Ocean Acidification

Just as there is an exchange of thermal energy between the atmosphere and the oceans, there is an ongoing exchange of gases between the atmosphere and the ocean. Each year some 92 billion metric tonnes of CO₂ are directly absorbed by the ocean from the atmosphere. At the same time, approximately 90 billion metric tonnes are released back to the atmosphere⁷. The net increase in dissolved CO₂ in the ocean is a direct result of increases in the atmosphere related to changes humans are making to the carbon cycle—most notably fossil fuel burning and land use changes (deforestation, mostly in the tropics). One of the consequences of this increase in dissolved CO₂ is a reduction in the pH of the ocean. This decrease in ocean pH (commonly called “ocean acidification”) can cause physiologic stresses in some species. In addition to physiologic effects, calcite-secreting organisms (including many phytoplankton, zooplankton, clams, snails, sea stars, sea urchins, crabs, shrimp, and many others) have more difficulty secreting their shells and plates under reduced carbonate ion concentrations. Deep-sea species will be particularly affected because increasing CO₂ levels in seawater decreases the saturation state of seawater with respect to calcium carbonate (CaCO₃) and raises the saturation horizon closer to the surface. Increasing surface CO₂ levels could have serious consequences for organisms that make external CaCO₃ shells and plates.⁸ The effect on food webs is unclear, but it is very likely that these effects will result in a loss of biodiversity and complexity in California's coastal marine ecosystems.

Project GHG Emissions and Offsets

Cable installation activities will result in GHG emissions, primarily CO₂ emissions from the fuel required to run the internal combustion engines of the cable-laying vessel(s). The project EIR estimates the project would result in total CO₂ emissions of 3,871.2 tons (based on calculating emissions out to AT&T's cable landing in Hawaii). AT&T has committed to the SLC and Coastal Commission to offset its CO₂ emissions. In **Special Condition 21**, the Commission is requiring that within 60 days of completing cable installation, AT&T shall purchase carbon offsets certified by the California Climate Action Registry (CCAR) or the San Luis Obispo Air Quality Management District (SLOAPCD) consistent with the policies and guidelines of the California Global Warming Solutions Act of 2006 (AB 32). AT&T may also use offsets or credits from any source that is approved by the Executive Director and is consistent with the policies and guidelines of the California Global Warming Solutions Act of 2006 (AB 32). Within 60 days of completing cable installation, AT&T is to submit a report for Executive Director review and approval that identifies all construction-related emissions and offsets that were purchased from approved programs that resulted in zero net increase in emissions from project construction.

For the above-described reasons, and as conditioned and with implementation by AT&T of the mitigation measures agreed to in its consistency certification, the Commission finds that

⁷ Schlesinger, W.H. (1997).

⁸ The Royal Society (2005).

AT&T will offset this project's contribution to global warming and potential coastal resource effects, and that the project is therefore consistent with Coastal Act Sections 30211, 30220, 30230, 30231, 30240, and 30253.

4.8 California Environmental Quality Act

As "lead agency" under the California Environmental Quality Act ("CEQA"), the California State Lands Commission is scheduled, on March 2, 2009, to certify an environmental impact report ("EIR") and approve a lease for the proposed project.

The Commission's permit process has also been designated by the State Resources Agency as the functional equivalent of the CEQA environmental impact review process. The Commission's permit review process identified numerous impacts that were not resolved in the mitigated negative declaration. Pursuant to section 21080.5(d)(2)(A) of the CEQA and section 15252(b)(1) of Title 14, California Code of Regulations (CCR), the Commission may not approve a development project "if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment." The Commission finds that only as conditioned are there no feasible less environmentally damaging alternatives or additional feasible mitigation measures that would substantially lessen any significant adverse impact which the activity may have upon the environment, other than those identified herein. Therefore, the Commission finds that the project as fully conditioned is consistent with the provisions of the CEQA.

APPENDIX A: 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. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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.

APPENDIX B: SUBSTANTIVE FILE DOCUMENTS**Coastal Development Permit Application and Federal Consistency Certification Materials:**

Application for Coastal Development Permit E-08-021, dated January 21, 2009.

Consistency Certification CC-005-09, dated February 18, 2009.

AT&T Corporation, *Cable Slack Management Plan for AT&T Asia America Gateway Project*, January 2009.

AT&T Corporation, *Spill Prevention and Contingency Plan for AT&T Asia America Gateway Project*, January 2009.

AT&T Corporation, *Storm Water Pollution Prevention Plan for AT&T Asia America Gateway Project*, January 2009.

AT&T Corporation, *Best Management Practices for AT&T Asia America Gateway Project*, January 2009.

NEC Corporation, *Burial Assessment, California Continental Shelf, Asia-America Gateway Project*, May 12, 2008.

Environmental Documents:

California State Lands Commission, *Draft Environmental Impact Report for the AT&T Asia America Gateway Fiber Optic Cable Project*, December 2008.

California State Lands Commission, *Finalizing Addendum for the AT&T Asia America Gateway Fiber Optic Cable Project*, February 2009.

Published Articles and Reports:

Cacchione, Drake, Field, and Tate. "Sea-floor gouges caused by migrating gray whales off northern California," *Continental Shelf research*, Vol. 7, No. 6, pp. 553-560.

California Coastal Commission. 2001. "Overview of Sea Level Rise and Some Implications for Coastal California."

Church, et al. 2008. "Understanding global sea levels: past, present and future," *Sustain. Sci.* 3:9 – 22.

Ganopolski, Andrey and Stefan Rahmstorf 2001. "Rapid changes of glacial climate simulated in a coupled climate model," *Nature*, 409: 153 – 158.

Hansen et al. 2005. "Earth's Energy Imbalance: Confirmation and Implications," *Science*, 308: 1431 – 1435.

Heezen, B.C. "Whales entangled in deep sea cables." *Deep-Sea Research* 4:105-115, 1957.

Reports from the Intergovernmental Panel on Climate Change (1990, 1992, 1995, 2001, 2007;
www.ipcc.ch/index.html)

Schlesinger, W.H. 1997. *Biogeochemistry: An Analysis of Global Change*. San Diego, Academic Press.

The Royal Society. 2005. *Ocean acidification due to increasing atmospheric carbon dioxide*. London. The Royal Society.

Wigley, T.M.L. 1990. "Global-mean temperature and sea level consequences of greenhouse gas concentration stabilization," *Geophysical Research Letters*, 22, 1: 45 – 48.

Other:

Electronic communication from James Burroughs, Allen Matkins, to Alison Dettmer, California Coastal Commission, Re: Draft Consistency Certification, dated January 8, 2009.

Electronic communication from James Burroughs, Allen Matkins, to Alison Dettmer, California Coastal Commission, Re: Draft Consistency Certification, dated January 19, 2009.

Electronic communication from Doug Barker, California Department of Parks and Recreation, to Larry Simon, California Coastal Commission, Re: State Parks comments on Draft EIR for AT&T Asia America Gateway Project, dated January 23, 2009.

Electronic communication from Chris Brungardt, ICF Jones & Stokes, to Alison Dettmer, California Coastal Commission, Re: Responses to Coastal Commission questions on AT&T Asia America Gateway Project, dated January 26, 2009.

Electronic communication from Scott McFarlin, California State Lands Commission, to Larry Simon, California Coastal Commission, Re: Comment letters received by CSLC on Draft EIR for AT&T Asia America Gateway Project, and copy of Operating Agreement between State Parks and San Luis Obispo County, dated February 3, 2009.

Electronic communication from Steve McMasters, San Luis Obispo County, to Larry Simon, California Coastal Commission, Re: Adopted Findings for San Luis Obispo County Permit No. D900132D (AT&T), dated February 3, 2009.

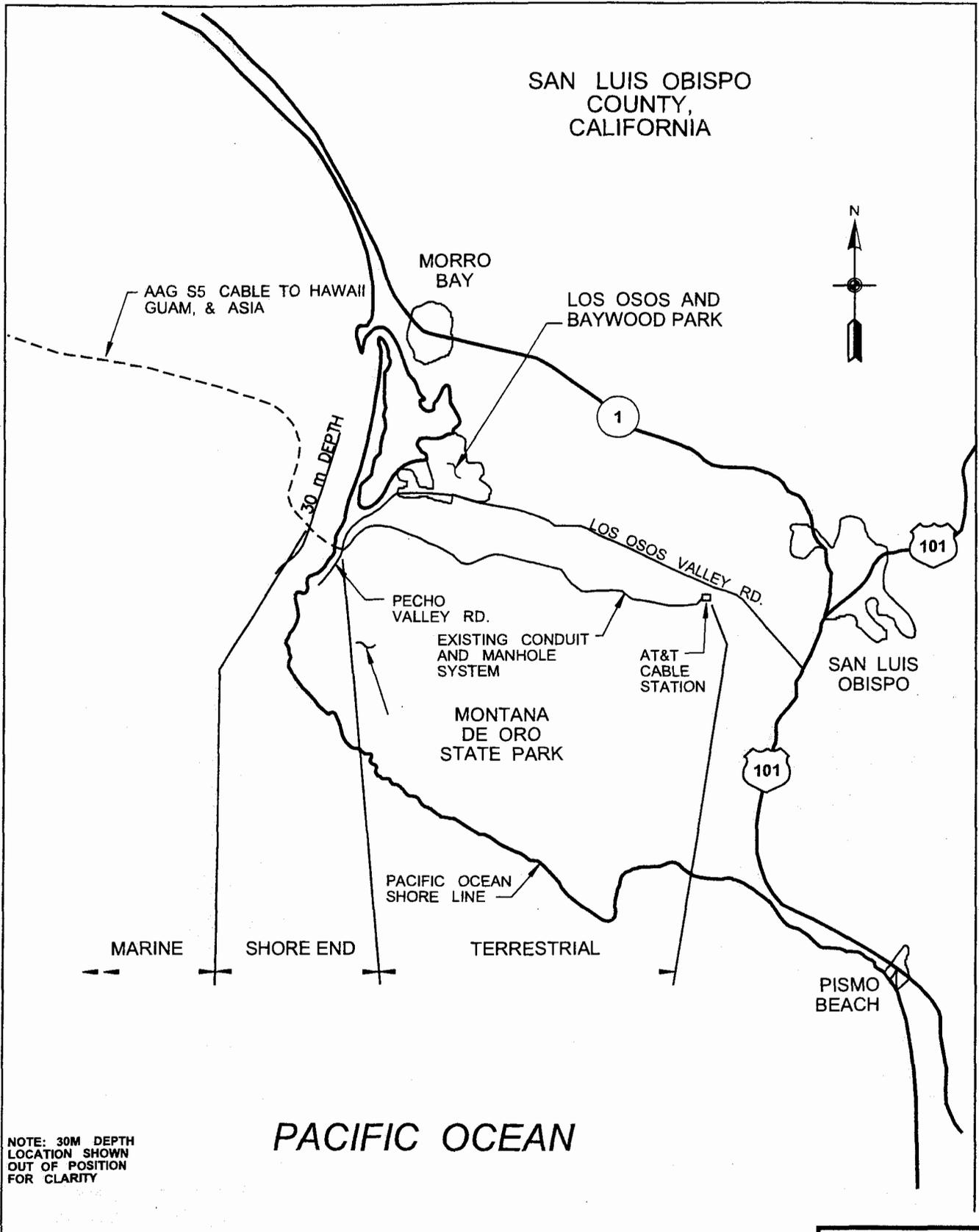
Electronic communication from Scott McFarlin, California State Lands Commission, to Alison Dettmer, California Coastal Commission, Re: Administrative Final EIR for AT&T Asia America Gateway Project, dated February 5, 2009.

Electronic communication from Doug Barker, California Department of Parks and Recreation, to Larry Simon, California Coastal Commission, Re: AT&T Asia America Gateway Project potential impacts on Montana de Oro State Park, dated February 10, 2009.

Electronic communication from James Burroughs, Allen Matkins, to Alison Dettmer, California Coastal Commission, Re: Draft mitigation measures for AT&T Asia America Gateway Project, dated February 12, 2009.

Electronic communication from Chris Brungardt, ICF Jones & Stokes, to Larry Simon, California Coastal Commission, Re: Application status of agency permits for AT&T Asia America Gateway Project, dated February 17, 2009.

Electronic communication from Steve Imhoof, Allen Matkins, to Alison Dettmer, California Coastal Commission, Re: Final mitigation measures for AT&T Asia America Gateway Project, dated February 19, 2009.



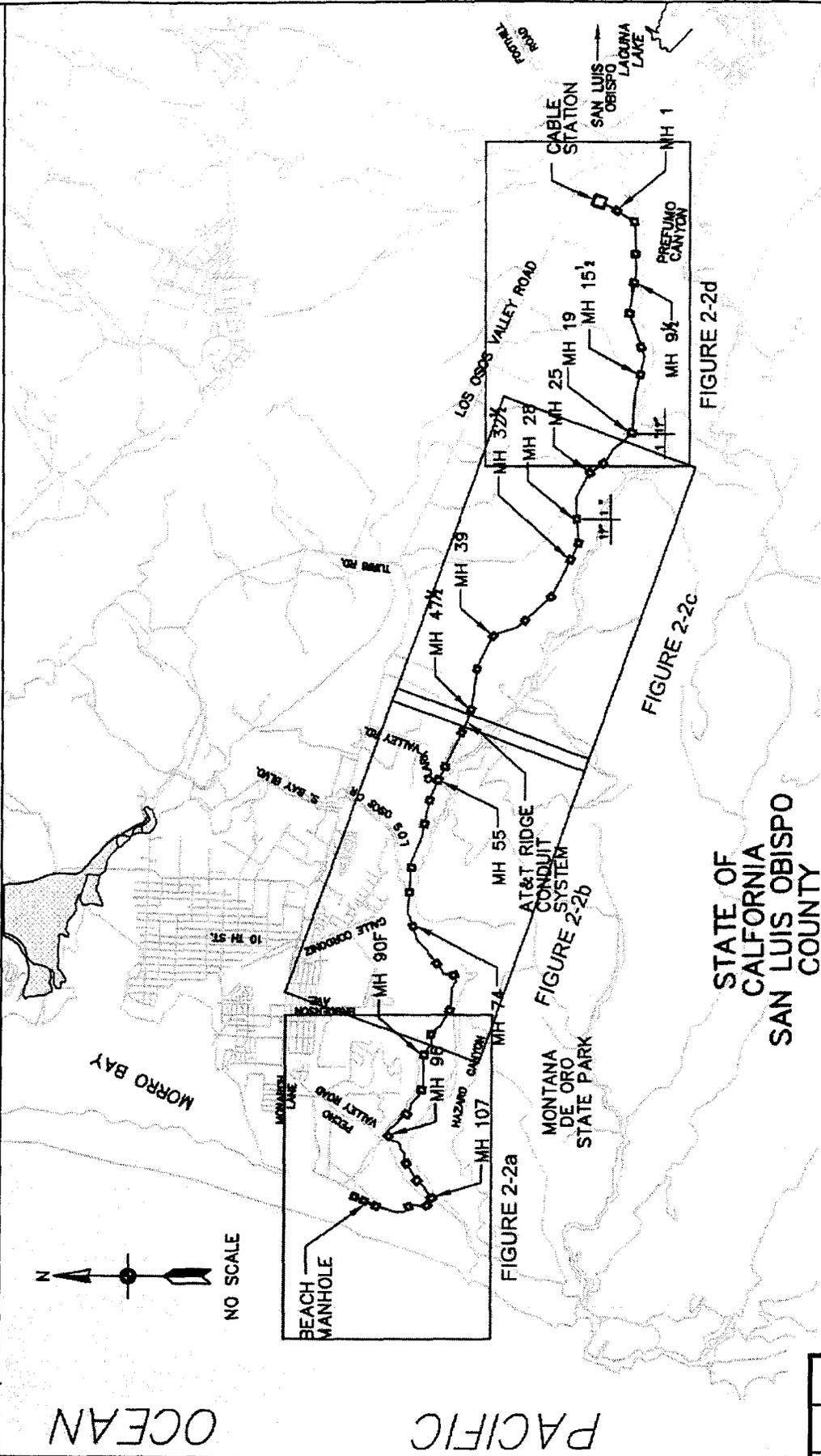
NOTE: 30M DEPTH
LOCATION SHOWN
OUT OF POSITION
FOR CLARITY

PACIFIC OCEAN

Source ICF Jones & Stokes 2008

padre
associates, inc.
ENGINEERS, GEOLOGISTS &
ENVIRONMENTAL SCIENTISTS
AT&T Asia America Gateway

EXHIBIT NO. 1
APPLICATION NO.
E-08-021
CC-005-09



STATE OF CALIFORNIA
 SAN LUIS OBISPO COUNTY

008



erica Gateway

TERRESTRIAL CONDUIT ROUTE - INDEX DRAWING
 FIGURE 2-5

EXHIBIT NO.	2
APPLICATION NO.	120-80-3
	60-500-52

Compensatory Hard Substrate Mitigation Fund
DRAFT
Memorandum of Agreement
Between the
California Coastal Commission
and
Regents of the University of California on behalf of
the Wildlife Health Center

This Memorandum of Agreement (“MOA”) is entered into by and between the California Coastal Commission (“Commission”), a public agency, created and existing under the authority of section 30300 of the California Public Resources Code, and the Regents of the University of California on behalf of the Wildlife Health Center (“WHC”). The Commission and the WHC are sometimes referred to individually as a “Party,” and collectively as the “Parties.”

RECITALS

WHEREAS, the Commission is a state coastal management and regulatory agency with authority over the development and use of the California coast and coastal waters;

WHEREAS, the WHC is a multidisciplinary center dedicated to balancing the needs of people, wildlife and the environment and the only comprehensive university-based veterinary program dedicated to conservation of healthy wildlife and ecosystems, including marine ecosystems. WHC is able to undertake conservation activities in coastal waters through its California Lost Fishing Gear Recovery Project;

WHEREAS, WHC’s California Lost Fishing Gear Recovery Project finds and recovers from marine waters accidentally lost or intentionally discarded fishing gear that can modify rocky seafloor habitats by obstructing crevices, enshrouding ledges, or causing scouring of the seabed and thereby potentially altering the animal, plant and algal communities living on hard substrate.

WHEREAS, AT&T Corporation (“AT&T”) applied for a coastal development permit, pursuant to the California Coastal Act (“Coastal Act”),¹ and submitted a consistency certification, pursuant to the federal Coastal Zone Management Act, to construct and operate the Asia America Gateway Fiber Optic Cable Project (“the Cable Project”).

WHEREAS, the Cable Project will result in unavoidable impacts to hard substrate marine habitat for which mitigation is required.

¹ Cal. Pub. Resources Code §§ 30,000 *et seq.* In this document, all further references to Code Sections in the 30,000s are references to California Public Resources Code sections within the Coastal Act.

EXHIBIT NO. 3
APPLICATION NO. E-08-021
CC-005-09

WHEREAS, on March 13, 2009, the Commission approved Coastal Development Permit (“CDP”) E-08-021, subject to Special Condition 15 that requires AT&T to pay a hard substrate impact mitigation fee to WHC in the amount of \$100,000, which shall be used to remove lost fishing gear from within the Southern California Bight, in accordance with the terms of this MOA;

WHEREAS, WHC maintains the state’s largest database of known derelict fishing gear targets;

WHEREAS, WHC wishes to receive the mitigation fee required by Special Condition 15 (“the Funds”) and to use it to remove lost fishing gear within the Southern California Bight (“the Mitigation Project”);

WHEREAS, removing lost fishing gear from within the Southern California Bight may include hiring commercial (e.g., urchin divers) and technical (e.g., military or commercial salvage) divers or remotely-operated vehicle (ROV) contractors to recover lost fishing gear where it poses a hazard to habitat, marine resources, and people.

WHEREAS, the Commission has concluded that WHC will be an appropriate recipient to receive the Funds and will accept the Funds for the purposes described herein;

WHEREAS, the Executive Director is authorized to enter into this agreement on behalf of the Commission by CDP E-08-021, which the Commission approved pursuant to its authority under Sections 30330, 30600(c) and 30607.

NOW, THEREFORE, for consideration of the mutual covenants and representations herein, it is mutually agreed by and between the undersigned Parties as follows:

AGREEMENT

1.0 TRANSFER OF FUNDS

As required by Special Condition 15, within 60 days of completion of marine cable installation, AT&T shall pay to WHC \$100,000 (“the Funds”). Upon receipt of the Funds, WHC shall deposit the monies into a separate account established for the Mitigation Project at UC Davis.

2.0 PROJECT IMPLEMENTATION

Within 45 days of the date on which the Funds have been transferred to it, WHC shall submit a spending plan for review and approval by the Commission’s Executive Director. The spending plan shall include at a minimum a description of the Mitigation Project and its estimated costs.

Within one year of the Executive Director's approval of the spending plan, WHC shall carry out and complete the Mitigation Project.

Within 45 days of completing the Mitigation Project, WHC shall submit a final report to the Commission's Executive Director describing the gear removed and its location, and a list of all disbursements. The WHC shall make all accounting records available for examination by the Commission's Executive Director upon request.

3.0 ACCOUNTABILITY

3.1 Administrative Costs

The WHC shall use the Funds exclusively to finance the Project described herein. Administrative costs in implementing this MOA, computed in accordance with applicable State Administrative Manual sections, shall not exceed five (5%) of the total Funds.

3.2 GAAP

The WHC (in accordance with University policy) shall maintain Generally-Accepted Accounting Principles (GAAP), financial management, and accounting system and procedures that provide for (1) accurate, current and complete disclosure of all financial activity for the Project; (2) effective control over, and accountability for all funds, property and other assets, related to the Project; (3) comparison of actual outlays with budgeted amounts; and (4) accounting records supported by source determination.

3.3 Records Retention

The WHC shall retain all pertinent books, documents and papers, including, but not limited to, financial transactions and supporting documents, in conjunction with University policy and procedure, for the entire period during which the Funds are being used by the WHC under this MOA and for a period of three (3) years thereafter for potential examination by the Auditor General.

4.0 MISCELLANEOUS PROVISIONS

4.1 Good Faith

The Parties agree in good faith to work to fulfill the objectives of this MOA. The Commission's Executive Director may grant an extension of any time deadline under this MOA for good cause, where there is reasonable justification or excuse for the delay.

4.2 Amendment

Neither this MOA nor any provision hereof may be waived, modified, amended, or

discharged except by an instrument in writing signed by the Parties.

4.3 Entire Agreement

This MOA constitutes the entire understanding among the Parties with respect to the matters set forth herein and supersedes all prior or contemporaneous understandings or agreements among the parties with respect to the subject matter hereof, whether oral or written.

4.4 Severability

If a court of competent jurisdiction determines that a provision included in this MOA is legally invalid, illegal or unenforceable, and such decision becomes final, such provision shall be deemed to be severed and deleted from this MOA and the balance of this MOA shall be reasonably interpreted to achieve the intent of the Parties. The Parties further agree to replace such void or unenforceable provision of this MOA with a valid and enforceable provision that will achieve, to the extent possible, the purposes of the void or unenforceable provision.

4.5 Counterparts

This MOA and any amendment thereto may be executed in two or more counterparts, and by each Party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute an instrument, with the same force and effect as though all signatures appeared on a single document.

4.6 Assignment

None of the Parties may assign any rights granted by this MOA without prior written approval of the other Party, which approval may be granted or withheld in any Party's reasonable discretion.

4.7 Effective Date and Term

This MOA shall become effective upon the last date of any Party to execute this MOA and shall be in effect from that date unless it is terminated or extended through an amendment, as provided in Section 4.2, above.

4.8 Termination

Either Party to this MOA may for good cause terminate this MOA by providing written notification 30 days prior to termination. In the event of termination, any and all remaining Funds shall be transferred by WHC to a Commission-approved alternate entity within 60 days of termination. Good cause shall include, but is not limited to, a determination by the Executive Director that WHC is not proceeding reasonably and expeditiously to complete

any component of the Project. In the event that the MOA is terminated, WHC agrees to take all reasonable measures to prevent further use of the Funds.

4.9 Governing Law

This MOA shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

5.0 NOTICES

5.1 Receipt of Notices

Any demand upon or notice required or permitted to be given by one Party to the other shall be in writing, shall be made in the following manner, and shall be effective (a) upon receipt if given by personal delivery, (b) on the date indicated on the receipt if given by certified or registered mail, return receipt requested, or (c) on the succeeding business day after mailing or deposit if given by Express Mail or by deposit with a private delivery service of general use (e.g. Federal Express), postage or fee paid, as appropriate, addressed to the Parties in Section 5.2.

Notice of a change of address or designated contact person shall be given by written notice in the manner set forth in this section within ten (10) business days of the change.

5.2 Designated Contact Persons

Ms. Alison Dettmer, Deputy Director
Energy, Ocean Resources and Federal Consistency Division
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
Telephone: (415) 904-5205
Facsimile: (415) 904-5400
Email: adettmer@coastal.ca.gov

Dr. Kirsten Gilardi, Assistant Director
Wildlife Health Center
School of Veterinary Medicine
University of California
Davis, CA 95616
Telephone: (530) 752-4896
Facsimile: (530) 752-3318
Email: kvgilardi@ucdavis.edu

Any change in the Notification Contact shall be communicated to all Parties within ten (10) business days of the change.

SIGNATURES

IN WITNESS WHEREOF, the Parties through the signatures below of their authorized representatives agree to be bound by the terms of this Agreement.

Dated: _____

Regents, University of California, Davis On
behalf of the Wildlife Health Center

By:
Title: Director

Dated: _____

California Coastal Commission

By: Peter Douglas
Title: Executive Director

AGREEMENT

BETWEEN CABLE COMPANIES AND FISHERMEN

THIS AGREEMENT ("Agreement") dated as of this 30th day of January, 2002, is made by and among MFS Globenet, Inc. ("MFS Globenet"), AT&T Corp. ("AT&T"), Global West Network, Inc., a wholly owned subsidiary of Global Photon Holding Co. (a.k.a. Global Photon Systems, Inc.) ("Global West") (each of MFS Globenet, AT&T, and Global West are hereinafter called "Cable Company" and collectively they are hereinafter called "Cable Companies"), individual trawl vessel owners and operators doing business in San Luis Obispo County who sign this Agreement and other commercial fishermen licensed to fish along the California coast who sign this Agreement (hereinafter collectively called the "Fishermen"), and the Morro Bay Commercial Fishermen's Organization, a California Mutual Benefit Corporation, the Port San Luis Commercial Fishermen's Association, a California Mutual Benefit Corporation, (collectively hereinafter called "the Associations"), with regard to the following facts:

RECITALS

WHEREAS, the Cable Companies have applied to and received from the California State Lands Commission, and to the United States Army Corp of Engineers, in addition to other governmental agencies having jurisdiction thereover (hereinafter "Governmental Agencies"), for approval to construct, install, continue and maintain telecommunications cable networks along the California coast (hereinafter "Cable Projects"), and

WHEREAS, the Governmental Agencies are responsible for preparing and certifying environmental review documents in compliance with the requirements of the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"), to assess the potential environmental impacts of the Cable Projects, the cumulative impacts of such projects, alternatives to such projects, and appropriate mitigation measures for such projects, and

WHEREAS, this Agreement is intended to identify, establish, and confirm certain mitigation measures and monitoring programs which are intended to facilitate environmental review of the Cable Projects, reduce potential conflicts between the installation, continuation, and maintenance of the Cable Projects and commercial fishing activities along the California coast; and

EXHIBIT NO. 4
APPLICATION NO.
E-08-021
CC-005-09

WHEREAS, this Agreement supercedes and replaces an Interim Agreement dated July 22, 1999 (as amended) among certain of the parties (the "July 22 Interim Agreement"), a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the parties acknowledge that commercial fishing activities are coastal dependent uses receiving the highest priority under the California Coastal Act, and the Federal Coastal Zone Management Act, the continuing viability of which is of critical importance to maintaining historic fishing activity along the California coast; and

WHEREAS, MFS Globenet, Inc.'s Cable Project is installed in the areas identified on Exhibit "B" hereto; and

WHEREAS, AT&T's Cable Project is installed in the areas identified on Exhibit "C" hereto; and

WHEREAS, Global West Network's Cable Project is installed in the areas identified on Exhibit "D" hereto; and

WHEREAS, each of the cables depicted on Exhibit "B," Exhibit "C," and Exhibit "D" is a "Covered Cable"; and

WHEREAS, The "Covered Area" is the area within one nautical mile on either side of a "Covered Cable" in the area from Point Arguello, Latitude 34 Degrees 34' North to Point Piedras Blancas, Latitude 35 degrees 40'N and out to the 1000 fathom curve; and

WHEREAS, the parties acknowledge that the commercial fishing industry is subject to substantial economic pressures, is vulnerable from a variety of regulatory, economic, and market sources, and that its continuing viability is subject to cumulative impacts which these Cable Projects may have upon the commercial fishing industry; and

WHEREAS, it is the intent of this Agreement to provide an enforceable agreement, and the Cable Companies acknowledge that in entering into this Agreement, the Fishermen are relying upon the good faith and representations by the Cable Companies that the provisions of this Agreement are enforceable and will be implemented in conjunction with any approved Cable Projects; and

WHEREAS, as a result of the environmental review by the Governmental Agencies, the Cable Projects may be conditioned and modified in order to appropriately mitigate impacts upon the commercial fishing industry.

NOW, THEREFORE, the Cable Companies, the Associations and the Fishermen hereby agree as follows:

**ARTICLE I
GENERAL PROVISIONS**

1.1. Committee

(a) **Formation.** A Committee has been formed, concurrently with the execution of the July 22 Interim Agreement, for the purposes described in this Agreement, and has been organized as a California non-profit Mutual Benefit Corporation.

(b) **Name.** The Committee is named the Central California Joint Cable/Fisheries Liaison Committee, Inc. (hereinafter "Committee").

(c) **Representation.** The Committee is governed by ten (10) voting Directors: four (4) Trawl Fishing Industry Representatives, four (4) Cable Company Representatives and two Association Representatives. The Trawl Fishing Industry Representatives shall be selected in the manner specified in the Bylaws. One Association Representative shall be appointed by the Morro Bay Commercial Fishermen's Organization and one shall be appointed by the Port San Luis Commercial Fishermen's Association (collectively "the Associations").

Each Cable Company shall appoint one Representative. The fourth Cable Company Representative shall be appointed in the manner specified in the Committee Bylaws.

The Committee shall adopt Bylaws to implement all aspects of this agreement. The Bylaws shall provide that in the event that the Directors of the Committee are deadlocked on any issue, then the deadlock shall be resolved by a designated mediator mutually agreeable to the parties, and appointed to serve as mediator within thirty (30) days of the date of the first deadlock being declared, and who shall continue serving as mediator until replaced by a majority vote of the Directors.

It is not the intent of this Agreement to create any liability of any kind or nature for any Directors of the Committee. The Committee shall obtain liability insurance naming the Committee as the primary insured and each individual Director as an additional insured.

(d) **Committee Jurisdiction.** The Committee activities shall relate to the Covered Cables within the Covered Area and the activities within the Covered Area of the Cable Companies and the Fishermen.

(e) **Initial Trawl Fishing Industry Representatives.** The initial Trawl Fishing Industry Representatives on the Committee were (1) John Doherty; (2) Joseph Giannini, Jr.; (3) "BJ" Johnson; and (4) Randy Larsen. The initial Trawl Fishing Industry alternates were: (1) Chris Kubiak and (2) Bill Ward.

(f) **Committee/Liaison Office Fund.** The Cable Companies shall fund a Committee/Liaison Office Fund to be used to pay for and reimburse Committee activities and Committee representatives as approved by the Committee. Each Cable Company made a deposit of Fifty Thousand dollars (\$50,000) to the Committee/Liaison Office Fund following execution of the July 22 Interim Agreement and each made annual contributions of \$50,000 in 2000 and 2001. In 2002 and thereafter, each Cable Company shall deposit Fifty Thousand Dollars (\$50,000) to the Committee/Liaison Office Fund within 30 days of receipt of an invoice from the Committee which shall be issued at the beginning of each calendar year. This obligation terminates with respect to any Cable Company if the Cable Company fails to place a fiberoptic cable in service by December 31, 2001. Funds in excess of the amount reasonably needed to fund the annual office administrative expense shall be transferred to the Commercial Fishing Industry Improvement Fund unless otherwise directed by the Committee.

The Committee shall establish an annual budget for all Committee activities to be paid from the Committee/Liaison Office Fund. The organizational budget shall include reasonable amounts for the activities described in Sections 1.1 (g) through (j). Accounting control procedures shall be developed by a San Luis Obispo County based certified public accountant selected by the Committee.

(g) **Compensation for Committee Activities.** Committee Trawl Fishing Industry and Association Representatives shall be compensated out of the Committee/Liaison Office Fund for time and travel expenses reasonably incurred for approved committee activities, including attendance at Committee meetings. The rate of compensation shall be Fifty Dollars (\$50) per hour, capped at no more than Five Hundred Dollars (\$500) per day plus reasonable travel expense.

(h) **Trawl Fishing Industry and Association Representatives' Compensation and Attorney's Fees for Negotiating Agreement.** Committee Trawl Fishing Industry and Association Representatives shall be compensated out of the Committee/Liaison Office Fund for time and travel expenses reasonably incurred to achieve execution of this Agreement at rates and in amounts approved by the Committee. The time charges and expenses reasonably incurred by an attorney or attorneys representing the Trawl Fishing Industry and/or the Associations in the preparation and review of this Agreement shall be paid by the Cable Companies.

(i) **Committee Office.** Office expenses reasonably incurred and approved by the Committee to carry out Committee activities shall be paid out of the Committee/Liaison Office Fund.

(j) **Cable Committee Liaison Officer.** The Committee shall develop procedures to select, hire and oversee a Committee Liaison Officer to carry out Committee activities and establish and run an office as necessary and approved by the Committee. The Committee Liaison Officer shall be paid out of the Committee/Liaison Office Fund at rates and in amounts approved by the Committee.

Multi-Year Contract

(k) **Committee Procedures.** The Committee shall establish policies and procedures, to review claims, to publicize and advance the goals of this Agreement and to conduct other activities consistent with the provisions of this Agreement.

(l) **Fishing Vessel Operating Procedures.** The Committee has established operating procedures, which shall be followed by Fishermen to guide operation of commercial fishing vessels in the vicinity of cables. The procedures address requirements for up-to-date charts and navigational aids, a prohibition of trawling over cables known to be exposed and procedures to follow if forward motion stops. The procedures include reasonable measures that the vessel operator may employ to avoid damage to the cable. A copy of the Operating Procedures adopted by the Committee is attached and incorporated as Exhibit E.

1.2 Cable Installations, Inspection and Information

(a) Each Cable Company shall have its Covered Cables installed at a depth of 1.0 meters beneath the seabed where feasible. In shallow water areas close to shore, the Covered Cables will be installed in a conduit. Each Covered Cable is intended to be buried to the extent reasonably possible and to remain buried, except in locations where due to geophysical constraints that is infeasible. Each Cable Company shall examine the seafloor and subsurface within reasonable proximity to the intended cable route to determine routes with ideally less than 5% cable exposure due to hard ground, rock seabed or other features which prohibit burial between three miles from shore and 1,000 fathom water depth. Each Cable Company shall consult with the Committee, pursuant to paragraph (g) regarding the timing and method of construction and installation of its cable project. Video equipment on the plow shall be used to record the burial operation. This shall serve as evidence of burial and will also indicate if the need exists to carry out post lay burial operations using an ROV. In all instances, the most modern technology in general commercial use shall be utilized in the cable burial process including Remote Operated Vehicle ("ROV") inspected for problematic regions immediately following installation, and ROV post-lay burial as required. In all "crossings" of its Covered Cables over existing undersea cable or pipelines, each Cable Company shall employ the latest industry standard protection techniques, and ROV and/or diver inspection shall be utilized as required. If any length of cable or cable-crossing cannot be completely buried after the inspection and burial procedure, the precise location will be identified in "as-built" coordinates provided by the Cable Company to the Fishermen. In the course of any repair or maintenance, the Covered Cable shall be buried to the extent possible to the same depth as it originally was buried. It is the intent of the parties to achieve the Cable Projects' objectives with minimal impacts upon the viability of the commercial fishing industry and minimal effects upon the extent and historic areas in which the commercial fishing industry is able to operate, and the practices and procedures used by the commercial fishing industry.

(b) **Installation Observation and Guard Ship Assignments.** (1) An observer selected by the Committee as described below shall be on board the Cable Company installation vessel to observe cable installation within the Covered Area. The observer's reasonable fees and expenses shall be paid by the Cable Company involved in the installation. The compensation shall be in addition to any funds provided in Sections 1.1(f) and 1.7 of this Agreement. The rate of compensation shall not exceed One Thousand Dollars (\$1,000.00) per day, plus reasonable travel expenses.

(2) The Committee shall equip the observer with a laptop computer and GPS equipment or other portable devices that will permit the observer to record the approximate position of the cable being installed. Cable position information recorded by the observer shall be distributed to the commercial fishing industry by the Committee as quickly as reasonably possible. The Cable Company shall bear no responsibility for the accuracy of the information recorded by the observer. The Committee shall inform recipients of the position information that the information is not the responsibility of the Cable Company but is being provided by the Committee. Recipients shall be required to sign a release in which they agree to use the information at their own risk and to release the Committee, the observer and the Cable Company from any and all claims that may arise from the use of the information.

(3) The Committee shall obtain from the Cable Company the requirements applicable to any fisherman observer. The Committee shall compile a list of all bottom contact fishermen doing business in San Luis Obispo County who wish to be considered for observer duty and who meet the requirements of the Cable Company. The list shall indicate the range of water depth within which each individual has the greatest fishing experience. Names shall be listed in random order, except that all individuals with previous experience as an observer shall be listed randomly after all individuals without such prior experience. When a Cable Company is required by this Agreement to have a fisherman observer aboard a cable vessel, the Cable Company shall inform the Committee where and when an observer may board the cable ship. The Committee shall select an observer from the list compiled. Observer positions shall be offered to individuals experienced in the water depth range in which the cable ship will be working in the order in which they appear on the list. To the extent that it can do so without interfering with efficient operations of the cable ship, the Cable Company shall change observers when convenient to the cable ship operations if the work continues outside the depth range of the initial observer. If the Committee fails to select an observer or the individual selected is not available or for any reason cannot be available to meet the operation schedule of the cable ship (such operation schedule to be determined at the sole discretion of the master of the cable ship) then the Cable Company shall have the option to proceed without an observer.

(4) Before the start of any cable project involving the use of guard vessels, the Committee shall provide the Cable Company's installation contractor with a list of commercial fishing vessels doing business in San Luis Obispo County that agree to be available for guard vessel duty. The list shall indicate the water depth range with which

the vessel has the most fishing experience and shall include other information about the vessel's characteristics and operating status. The Cable Companies shall encourage their contractors to select guard vessels from the Committee list in the order listed, if the contractors elect to employ local vessels for guard duty. The Cable Companies shall encourage their contractors to change guard vessels from time to time and to employ vessels indicated by the Committee's list to be experienced in the depth range where the cable installation is to occur. Payment terms shall be negotiated between the contractors and the owners of the guard vessels employed.

(c) Post-Installation Information. Each Cable Company shall provide cable as built installations, latitude and longitude in WGS 84 datum coordinates to the Fishermen and the Committee as soon as reasonably possible after the Cable Companies' contractor for the installation of the cable delivers the information to Cable Companies. This data shall be provided in writing, electronically, and on navigational charts.

(d) Post-Installation Inspections. Each Cable Company shall conduct ROV Burial verification to determine whether any buried sections of its Covered Cables have become exposed at minimum of every 18 months and not to exceed 24 months and after any events which may affect the Cable Project. Copies of videotapes recording the verification shall be provided to the Committee.

(e) Unforeseen Consequences. The economic and environmental impacts of the Cable Projects and the appropriate level of mitigation shall be reviewed by the Committee after each of the first two years following the completion of installation of each Cable Project and adjusted, if necessary, for unforeseen consequences arising from the installation, assignment, operation, use, repair, replacement, continuation, and maintenance of the Cable Projects.

(f) Continuing jurisdictions. The parties agree that all of the approving Governmental Agencies for the Cable Projects shall reserve jurisdiction to amend or modify the terms, conditions, and project mitigation measures over the useful life of the Cable Projects, and shall have jurisdiction to impose additional mitigation measures based upon the monitored actual impacts of the Cable Projects upon fisheries and/or the commercial fishing industry. Such jurisdiction, and the ongoing authority of the Committee, shall include modifications of the approved projects and this Agreement to address, consistent with the purposes of this Agreement, future fishery gear types which may be affected by the Cable Projects.

(g) Construction and installation. The timing and methods of construction and installation of the Cable Projects shall be determined in consultation with the Committee, with the goal of minimizing any adverse impacts upon the commercial fishing industry. The Cable Companies agree to compensate any segments of the commercial fishing industry which are damaged as a result of the acts of installing, repairing, replacing, or maintaining of the Cable Projects, or any incidental activities in connection therewith. The amount of such compensation, as well as those entitled to

receive it, shall be determined by the Cable Company involved; implementing guidelines approved by the Committee. Such compensation shall be in addition to any funds provided in Sections 1.1(f) and 1.7 of this Agreement.

1.3 24-Hour Telephone Hotline

Each Cable Company, either individually or in cooperation with other Cable Companies, shall provide and maintain a 24-hour, toll-free telephone hotline to receive calls from Fishermen who believe they have snagged their gear on a Covered Cable owned and/or operated by that Cable Company. Furthermore, the Cable Companies will endeavor to include all Covered Cables on one 24-hour toll-free hotline. There shall be a representative on duty at all times who has the authority, background, and experience to advise the Fisherman whether the reported position is in the vicinity of a Covered Cable owned and/or operated by that Cable Company. Reporting procedures when using the hotline shall be developed by the Committee.

1.4 Gear Replacement Costs/Claims

Each Cable Company shall pay 100% of the costs of gear sacrificed by a fishing vessel as a result of being snagged on a Covered Cable owned and /or operated by that Cable Company, provided 1) the vessel has informed the 24-hour, toll-free telephone hotline of its situation at the time of, or immediately following being snagged and 2) the vessel's conduct was consistent with the Fishing Vessel Operating Procedures established pursuant to paragraph 1.1 (l). The Cable Company shall also pay a premium in the amount of 50% of the value of the sacrificed gear to settle claims for loss of business incurred by the vessel. The Cable Company shall be responsible for promptly disbursing payments for the gear replacement costs and claims.

1.5 Cable Damage Claims/Release of Liability

(a) The Cable Companies agree to release any claims they might otherwise have, either individually, or collectively, against individual fishermen and refrain from taking any administrative, legal, or other action to sanction and/or recover damages against Fishermen who comply with the Fishing Vessel Operating Procedures established by the Committee. The Cable Companies further agree to encourage all administrative, legal, judicial and other authorities to respect the terms and conditions of this Agreement, and the procedures established by the Committee for the resolution of any cable damage claims. The Cable Companies hereby agree to assume all liability, responsibility, and risk for any damage which may occur to their Cable Projects resulting from their inability to construct, maintain, place, and continue Covered Cables in a manner which does not interfere with fishing conducted in conformity with the Fishing Vessel Operating Procedures.

(b) A three-step procedure shall be provided for resolution of all disputes, including disputes concerning claims by a Cable Company for damage to its Cable Project ("cable damage claims") and disputes concerning the following claims of Fishermen: 1) claims regarding a Fisherman's entitlement to the compensation provided in Section 1.4 above for the sacrifice of fishing vessel gear to avoid injuring any Covered Cable or related facilities being constructed or operated by the Cable Companies; 2) claims arising from any incident involving conduct by any Cable Company that negligently damages the Fisherman's fishing gear and the fish contained in such gear, and 3) claims arising from any conduct by the Cable Company that removes or damages, or tampers with the Fisherman's fishing gear and the fish contained in such gear without authorization from the Fisherman. Pursuant to the procedure: (1) the parties shall meet with the Committee in an effort to settle the dispute; (2) if the parties are unable to settle the dispute within a reasonable period of time with the assistance of the Committee, the parties shall request the Committee to select an independent mediator to assist in the resolution of the dispute; (3) if the parties are unable to settle the dispute within a reasonable period of time with the assistance of the mediator, the parties shall submit to binding arbitration all disputes over Fishermen's claims and any dispute over cable damage claims that the parties mutually agree to submit to binding arbitration. With respect to disputes over cable damage claims, unless the parties agree within seven days of the end of mediation to submit the dispute to binding arbitration, the Cable Company shall be free to pursue any legal remedies available to it and the vessel owner and operator shall be free to assert any legal defenses available. Any arbitration shall be determined in San Luis Obispo County, California. Each party to the arbitration shall appoint an independent arbitrator. If the two arbitrators so appointed cannot agree within 30 working days after their appointment, they shall select a third arbitrator. The decision in writing of the three arbitrators, or any two of them, shall be final and binding upon the parties therein, who shall conform to and abide by said decision. If either party fails to appoint his arbitrator within seven days after notice in writing requiring him to do so, the arbitrator appointed by the other party shall act for both, his decision in writing shall be final and binding upon both parties, as if he had been appointed by consent, and both parties thereto shall conform to and comply therewith. The expenses for the process described in this paragraph (b) shall be paid by the Cable Company in addition to any other payments that are required under this Agreement. When a claim before the Committee involves a bottom trawl vessel, the Association representatives on the Committee shall not have a vote. When a claim before the Committee involves a vessel that is not a bottom trawl vessel, the Association representatives shall have a vote and the Trawl Fishing Industry representatives shall not have a vote.

1.6 Out-of-Service Cables

(a) To the extent required by any governmental approvals, the Cable Companies agree to abandon and remove out-of-service Covered Cables as necessary so as not to interfere with commercial fishing activities in the areas where such cables were previously installed.

(b) AT&T agrees to use its best efforts to secure the removal of the existing HAW-3 cable between the three-mile limit and 1000 fathoms water depth.

1.7 Commercial Fishing Industry Improvement Fund

Each Cable Company shall annually deposit One Hundred Thousand Dollars (\$100,000) per project in a special fund for enhancement of commercial fisheries and the commercial fishing industry and support facilities. This payment obligation shall commence and the first payment shall be due within thirty (30) days of the Cable Company receiving final approval from all agencies of the State of California and all local agencies for its project. Full payment shall be required for the calendar year in which final approval is received. Annually thereafter, each Cable Company shall deposit one hundred thousand dollars (\$100,000) to the Commercial Fishing Industry Improvement Fund, or as directed by the Committee, within 30 days of receipt of an invoice from the Committee, which shall be issued at the beginning of each calendar year.

Lease applications for projects in addition to those projects specified in paragraph 1.9 shall constitute new projects for the purpose of this paragraph. For each cable installed as part of a new project, the Cable Company shall annually contribute an additional \$100,000 to this fund.

In the event that any mitigation intended for the commercial fishing industry is ordered by action of a governmental agency, the payment of such ordered mitigation shall offset funds required to be paid pursuant to this paragraph.

1.8 Parties

This Agreement shall be by and between and for the benefit of the Cable Companies and the Fishermen, and any other licensed commercial fisherman operating in the Covered Area who signs this Agreement.

1.9 Covered Cables

This Agreement shall cover the following telecommunications cable projects of the Cable Companies: (a) MFS Globenet - Southern Cross (one cable); Japan-US (one cable); (b) AT&T - China-U.S. (two cables); Japan-US Interlink (one cable); and (c) Global West - Global West (two cables). These cable projects are depicted in Exhibits B, C, and D attached hereto.

1.10 Assignment

This Agreement shall be assignable to future successors, assigns and donees of a Cable Company, including their lenders as required, provided that such successor, assignee or donee agrees to be bound by the provisions of this Agreement.

1.11 Upgrading of Communications and Navigation Equipment

A one-time payment of Five Hundred Dollars (\$500) shall be made by each Cable Company to each vessel engaged in trawl fishing in the Covered Area that is owned and operated by a Fisherman for use in upgrading communication and navigation equipment for such vessel.

**ARTICLE 2
MISCELLANEOUS**

2.1 Governing Law

This Agreement, and the rights and duties of the parties arising hereunder shall be governed by and construed in accordance with the laws of the State of California except provisions of that law referring governance or construction to the law of another jurisdiction.

2.2 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which constitute but one Agreement.

2.3 Miscellaneous

(a) Unless specifically agreed in writing, no party may commit the other parties to any agreement or undertaking.

(b) Nothing in this Agreement shall be construed to create or constitute a partnership, agency or similar relationship or to create joint or several liability on the part of any of the parties.

(c) All correspondence should be directed to the addressees and individuals indicated next to the signature of each party, or to such other address or individuals as a party may request in writing from time to time.

(d) This agreement shall terminate as to any Cable Company or its successors at such time as it ceases to operate commercial fiberoptic cables within the Covered Area or if the Cable Company does not place a cable in service before December 31, 2001.

(e) This agreement may be amended only by vote of the Board of Directors of the Committee.

Final

IN WITNESS WHEREOF, the parties have entered into this AGREEMENT as of the day and year first above written.

CABLE COMPANY

MFS Globenet, Inc.

Dated: Aug 30, 2001 By: Mikal Modisette
Mikal Modisette
Authorized Representative

AT&T Corp.

Dated: Aug 30, 2001 By: Robert Wargo
Robert Wargo
Authorized Representative

Global West Network, Inc.

Dated: _____, 2001 By: _____
Robert Spiegelthal
Authorized Representative

FISHERMEN'S ASSOCIATIONS

Port San Luis Commercial
Fishermen's Association
PO Box 513
Avila Beach, CA 93424

Dated: 1/30, 2001 By: [Signature] FOR BRIAN JOHNSON
Authorized Representative

Dated: 1/30, 2001 By: William James
Authorized Representative

Final

Morro Bay Commercial
Fishermen's Organization
PO Box 450
Morro Bay, CA 93443

Dated: 01-30-~~0~~ 2002 By: [Signature]
Authorized Representative

Dated: 01-30 ²⁰⁰², 2001 By: [Signature]
Authorized Representative

FISHERMEN

Dated: 01-30 2002 By: [Signature]
Name
FN Cynthia
Vessel Name

Dated: 01-03 2002 By: [Signature] solo owner operator
Name
JONATHAN
Vessel Name

Dated: 01-30- 2002 By: [Signature]
Name
DANCIA BEAR
Vessel Name

Dated: 2-15-02 2002 By: [Signature]
Name
D.J.
Vessel Name

Dated: _____, 2001 By: _____
Name

Vessel Name

Final

Dated: _____, **2001 By:** _____
Name

Vessel Name

Dated: _____, **2001 By:** _____
Name

Vessel Name