

**CALIFORNIA COASTAL COMMISSION**

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Staff: K.Huckelbridge-SF  
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Hearing Date: 8/10/12

## **STAFF REPORT: PERMIT AMENDMENT/ CONSISTENCY CERTIFICATION**

**Application No.:** E-05-007-A1

**Consistency Certification No.:** CC-076-05

**Applicant:** Monterey Bay Aquarium Research Institute

**Location:** State and federal waters offshore of Moss Landing, California, within the Monterey Bay National Marine Sanctuary.

**Project Description:** Amend Special Condition 7 of the original permit (E-05-007) and modify consistency certification (CC-076-05), to require periodic surveys of undersea cables every five years, rather than every 18 to 24 months as originally approved.

**Staff Recommendation:** Approve permit amendment/concur with modified consistency certification

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## SUMMARY OF STAFF RECOMMENDATION

In September 2005, the Commission approved the Monterey Bay Aquarium Research Institute's (MBARI) Coastal Development Permit E-05-007, and concurred with Consistency Certification CC-076-05 for the construction and operation of a telecommunications fiber optic cable laid between a shore station in Moss Landing and a science node placed on the seabed on Smooth Ridge, approximately 31.7 miles west-southwest of Moss Landing and within the Monterey Bay National Marine Sanctuary. The purpose of the submarine cable is to gather real-time, continuous and long-term monitoring data of conditions beneath the surface of Monterey Bay.

Prior to MBARI's project the Commission approved seven commercial undersea fiber optic cable projects that included similar project components, Coastal Act findings, and permit conditions. A key issue addressed in each of these permits and consistency certifications was the potential adverse effects on coastal resources related to entanglement with the cables. Specifically, the findings addressed concerns that: 1) whales may become entangled with the cables, 2) trawlers may snag their gear on a cable and thus lose gear and fishing time, or 3) abandoned trawl nets may entangle and drown marine mammals or other marine wildlife. To prevent potential adverse effects associated with entanglement, each permit, including MBARI's, requires the permittee to bury the cables to a depth of 1.0 meter if feasible. The permittees are also required to survey the cable route every 18 to 24 months to verify that the cable remains buried. If the cable survey indicates that previously buried cable has become unburied, the permittee is required to re-bury the cable segments. In each of the seven commercial projects, the permittee conducted three periodic cable surveys, all of which indicated that the buried cables were remaining buried. Based on these results, each of the permittees requested, and the Commission approved, an increase in the survey interval to five years. The knowledge gained from these prior projects was incorporated into MBARI's permit. Special Condition 8 of MBARI's permit states that if the first two periodic cable surveys indicate that the buried cable remains stable, the permittee can request, in the form of a permit amendment, that the survey interval be increased.

The results of MBARI's 2007 post-lay inspection survey and two periodic surveys completed in 2008 and 2010 demonstrate that buried cable remains buried. As such, MBARI proposes to reduce the frequency of the periodic surveys for the cable segments in State and federal waters from once every 18 to 24 months to once every five years, with the next survey report due to the Commission by November 1, 2015. Since buried cable has remained buried over time, changing the frequency of the burial surveys from every two years to every five years is not expected to reduce protection of coastal resources. Furthermore, changing the frequency of the burial surveys will reduce the environmental effects associated with performing the surveys (e.g., air emissions from survey vessels and potential conflicts with commercial fishing along the cable survey routes).

Commission staff recommends that the Commission **approve** the proposed permit amendment and concur with MBARI's modified consistency certification.

## **I. MOTIONS AND RESOLUTIONS**

### **1. Coastal Development Permit Amendment**

#### **Motion:**

*I move that the Commission **approve** Coastal Development Permit Amendment Application No. E-05-007-A1 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 amendment 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 Amendment E-05-007-A1 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. 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.*

### **2. Consistency Certification**

#### **Motion:**

*I move that the Commission concur with the Monterey Bay Aquarium Research Institute's modification of Consistency Certification CC-076-05 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program.*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in an agreement with the determination 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 to Concur with Consistency Certification:**

*The Commission hereby concurs with the Monterey Bay Aquarium Research Institute's modification of Consistency Certification CC-076-05 on the grounds*

*that the project is fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the CCMP.*

## II. FINDINGS AND DECLARATIONS

### A. BACKGROUND/PROPOSED MODIFICATIONS

In September 2005, the Commission granted approval to the Monterey Bay Aquarium Research Institute (“MBARI”) to build and operate the Monterey Accelerated Research System (“MARS”) cabled observatory project. The project consists of a submarine cable laid between a shore station in Moss Landing and a science node placed on the seabed on Smooth Ridge, approximately 31.7 miles west-southwest of Moss Landing and within the Monterey Bay National Marine Sanctuary. The purpose of the submarine cable is to gather real-time, continuous and long-term monitoring data of conditions beneath the surface of Monterey Bay.

In addition to the research-focused MBARI project, the Commission approved the installation and operation of seven commercial offshore fiber optic cable systems all along the California coast between 2000 and 2009.<sup>1</sup> The Commission required each applicant to bury the cable in soft sediment, where feasible, to avoid interference with commercial fishing gear and prevent whale entanglements. Each permit also required that every cable be surveyed every 18 to 24 months to determine if the cable remained buried. If previously buried cable became unburied it was to be reburied. In each case, the applicant, as part of its consistency certification, agreed to implement these same measures in federal waters.

By 2005, most of the fiber optic cable companies had completed two to three cable burial surveys. Generally, the results of these surveys showed that buried cable remains buried and stable. As a result, between 2006 and 2010, the Commission approved amendments to six of the permits to extend the required burial survey interval from once every 18 to 24 months to every five years.<sup>2</sup>

**Special Condition 7** of Coastal Development Permit (CDP) E-05-007 required MBARI to conduct periodic cable inspection surveys in State waters every 18 to 24 months. In its consistency certification, CC-076-05, MBARI also committed to performing these surveys for the cable segments in federal waters. If results from the first two periodic surveys indicated that the buried cable remained stable, Special Condition 7 also allowed MBARI to request, in the form of a permit amendment application, a reduction in subsequent survey intervals.

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<sup>1</sup> E-98-027/CC-041-00 - PC Landing Corporation and PAC Landing Corporation; E-98-029/CC-059-00, E-00-004/CC-078-00 and E-08-021/CC-005-09 – AT&T Corporation; E-99-011/CC-028-00 – MFS Globenet, Inc.; E-00-008/CC-110-00 – Global West Network, Inc.; and E-01-029/CC-111-01 – Tyco Networks, Inc./Tata Communications, Inc.

<sup>2</sup> E-98-027-A2/CC-041-00 – PC Landing, approved 2/9/06; E-98-027-A3/ CC-041-00 – PAC Landing, approved 6/15/06; E-99-011-A2/CC-028-00 – MFS Globenet, Inc, approved 8/8/07; E-98-029-A2/CC-059-00 and E-00-004-A1/CC-078-00 – AT&T Corporation, approved 11/15/07; E-01-029-A3/CC-111-01 – Tata Communications, Inc, approved 12/17/10

The results of the 2007 post-lay inspection survey and three periodic surveys completed in 2008, and 2010 demonstrate that buried cable remains buried. MBARI therefore proposes to reduce the frequency of the periodic surveys for the MARS cable in State and federal waters from once every 18 to 24 months to once every five years, with the next survey report due to the Commission by November 1, 2015. In addition to increasing the survey interval, this schedule would bring MBARI onto the same schedule that is applied for the other fiber optic cable companies. This scheduling overlap allows the organizations to coordinate survey vessels and equipment, thus reducing the cost and environmental impacts associated with the surveys.

The proposed revised special condition set forth below would supersede and replace **Special Condition 7** approved by the Commission in CDP E-05-007. The revisions are illustrated by strikethroughs for deletions and underlining for additions. All other requirements of the Commission's approval of CDP E-05-007 remain in full force and effect with respect to the amended project.

*Special Condition 7 requires that every ~~18 to 24 months~~, MBARI shall survey the cable route to verify that buried cable has remained buried consistent with the as-built plan required by Special Condition 5. MBARI shall complete the first survey of the cable within 18-24 months of initial cable installation. The second survey shall be completed within 18-24 months of completion of the first survey. ~~If, based on the results of the first two surveys, there is no evidence of cable movement (i.e., buried cable remains stable), MBARI may request in the form of a permit amendment application a reduction in subsequent survey intervals.~~ MBARI shall conduct subsequent surveys within five (5) years of completion of the prior survey. Surveys shall be conducted with a remotely operated vehicle ("ROV") equipped with video and by a party approved by the Executive Director. Within 30 days of survey completion, MBARI 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 a survey shows that a segment(s) of the cable is no longer buried consistent with the as-built cable burial plan required by Special Condition 5, MBARI 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, MBARI shall proceed to implement the plan in accordance with the time schedule specified therein.*

MBARI also proposes to survey the cables located in federal waters every five years.

## **B. PERMIT AND FEDERAL CONSISTENCY JURISDICTION**

This staff report is a combined analysis for the coastal development permit amendment and the modified consistency certification. The Coastal Commission has original 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. The portion of the revised project that involves cables buried within State waters (i.e., seaward of the mean high tide line to three

nautical miles offshore) required a CDP amendment from the Coastal Commission, and is the subject of this amendment application.

The project also required a federal permit from the United States Army Corps of Engineers, and therefore required a federal consistency certification pursuant to Section 307(c)(3)(A) of the Coastal Zone Management Act. For the portion of the project that lies outside the coastal zone in federal waters, MBARI submitted a modified consistency certification to the Coastal Commission on July 17, 2012. MBARI has certified that the amended activity complies with California's approved coastal management program (CCMP) and will be conducted in a manner consistent with the CCMP.

### **C. OTHER AGENCY APPROVALS**

#### **California State Lands Commission**

MBARI entered into a lease with the State Lands Commission (SLC) that authorized the laying of the subject cable segments across State-owned submerged lands and tidelands. This lease also requires periodic cable burial surveys once every 18 to 24 months. MBARI's April 2012 request to the SLC to extend the survey requirements of its leases to once every five years is pending.

#### **Monterey Bay National Marine Sanctuary**

In July 2011, MBNMS agreed to increase the cable survey interval to five years.

### **D. MARINE RESOURCES AND COMMERCIAL FISHING**

Section 30230 of the Coastal Act states:

*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.*

Coastal Act Section 30234.5 states:

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

Key Coastal Act issues addressed in the findings for the original permit include potential adverse effects on fishing and marine resources related to entanglement with the cables. Specifically, the findings addressed concerns that: 1) whales may become entangled with the cables; 2) trawlers may snag their gear on a cable and thus lose gear and fishing time; and/or 3) abandoned trawl nets may entangle and drown marine mammals or other marine wildlife. The Commission required **Special Condition 7** in order to help ensure that the cables remained buried, to reduce the possibility of adverse impacts to marine mammals and commercial fishing from entanglement with the cables.

MBARI now has two survey data sets that indicate the cables have not become unburied since installation nearly five years ago. There is no indication that the cables will become unburied in the next 5 years. Thus, increasing the survey interval to five years is not expected to have an adverse effect on coastal resources.

Each survey causes some impacts to coastal resources, including significant emissions of criteria pollutants and greenhouse gases from survey vessel emissions, and space preclusion impacts to commercial fishermen. Increasing the survey interval will reduce these impacts to coastal resources. The Commission therefore finds that reducing the survey interval from once every 18 to 24 months to once every five years is consistent with the marine resources and commercial fishing policies (Sections 30230 and 30234.5) of the Coastal Act.

## **E. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. Based on information derived from surveys that have been performed thus far, a reduction in the frequency of the burial surveys will not materially increase the likelihood of the environmental effect that the surveys are intended to detect, namely, the uncovering of the cables. Furthermore, such a reduction will reduce the environmental effects associated with performing the surveys (e.g., air emissions from survey vessels and potential conflicts with commercial fishing along the cable survey routes). The project as amended by the conditions of approval described herein incorporates mitigation measures to avoid any significant environmental effects under the Coastal Act and the CEQA. There are no less environmentally damaging feasible alternatives or mitigation measures.

**Appendix A: Substantive File Documents**

Monterey Bay Aquarium Research Institute. "MARS Cable Permit Amendment Request for CDP E-05-007 and CC-076-05. May 4, 2012.

California Coastal Commission. "Final Adopted Findings for CDP Application Number E-05-007 and Consistency Certification CC-076-05." August 30, 2005 (Approved September 15, 2005).

Monterey Bay Aquarium Research Institute. "Potential Impacts of the MARS Cable on the Seabed and Benthic Faunal Assemblages." 1<sup>st</sup> MARS Cable Re-survey.

Monterey Bay Aquarium Research Institute. "MARS: 2<sup>nd</sup> MARS Cable Re-survey," Monterey, CA. July 20, 2011.

Email Correspondence from MBARI representative dated 7/17/12 and 7/18/12.