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STAFF REPORT: PERMIT AMENDMENT/ CONSISTENCY CERTIFICATION

Application No.: E-08-021-A1

Consistency Certification No.: CC-005-09

Applicant: AT&T Corporation

Location: In state and federal waters offshore of San Luis Obispo County (see **Exhibit 1**).

Project Description: Amend **Special Condition 8** of the original permit and modify consistency certification (CC-0005-09) to require periodic surveys of already installed underwater cable only after an event or physical phenomenon that could result in the cable becoming unburied, rather than the current practice of every five years.

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

SUMMARY OF STAFF RECOMMENDATION

In March 2009, the Commission approved coastal development permit E-08-021 and concurred with consistency certification number CC-005-09 for the installation, operation, and maintenance of a fiber optic cable extending from Hawaii and landing at Montaña de Oro State Park, west-southwest of the City of Los Osos in San Luis Obispo County. The cable was installed in May 2009.

Key Coastal Act issues addressed in the findings for the original permit include potential adverse effects on coastal resources related to entanglement with the cable. Specifically, the findings addressed concerns that: 1) whales may become entangled with the cable; 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 impacts associated with entanglement, **Special Condition 3** of the original permit required the applicant to bury the cable to a depth of 1.0 meter except where precluded by seafloor substrates. **Special Condition 8** of the original permit requires that for every 12 to 24 months for a total of two times during the first four years of the project, and 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), the applicant shall survey the cable routes to verify that the cable remains buried. If the cable survey indicates that previously buried cable has become unburied, the applicant is required to re-bury the cable segments.

The results of the 2009 post-lay inspection survey and periodic surveys completed in 2010 and 2015 demonstrate that buried cable remains buried. The applicant therefore proposes to eliminate the requirement to survey the cable every five years and replace it with a requirement to survey only after an event or physical phenomenon that could result in a cable becoming unburied. Since buried cable has remained buried over time and no conflicts have been reported since its installation, eliminating periodic burial surveys and instead surveying the cable only after a natural or anthropogenic event that has the potential to expose the cable (i.e., seismic activity or gear snag) will not reduce protection of coastal resources. Furthermore, eliminating the periodic 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). The Central California Joint Cable/Fisheries Liaison Committee supports the proposed amendment (**Exhibit 2**).

Commission staff recommends that the Commission **approve** the proposed amendment to coastal development permit E-08-021-A1 and **concur** with AT&T's modified consistency determination.

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EXHIBITS

Exhibit 1 – Project Overview

Exhibit 2 – Letter from the Central California Joint Cable/Fisheries Liaison Committee

I. MOTION AND RESOLUTION

1. Coastal Development Permit Amendment

Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. E-08-021 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the amendment as conditioned 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 the coastal development permit amendment on the grounds that the development as amended and subject to conditions will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

2. Consistency Certification Modification

Motion:

*I move that the Commission **concur** with AT&T's modified Consistency Certification CC-005-09 on the grounds that the project, as modified, remains 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 with the modified consistency certification that the project remains consistent with the CCMP 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 Modified Consistency Certification:

The Commission hereby concurs with AT&T's modification of Consistency Certification CC-005-09 on the grounds that, as modified, the project would remain consistent with the enforceable policies of the CCMP.

II. FINDINGS AND DECLARATIONS

A. BACKGROUND

In March 2009, the Commission approved coastal development permit (CDP) E-08-021 and concurred with consistency certification number CC-005-09 for AT&T's installation, operation, and maintenance of a fiber optic cable between San Luis Obispo County and Hawaii (and connecting beyond to Guam and other Asian locations). The cable connects with the existing AT&T fiber optic cable system at a cable station southwest of San Luis Obispo (**Exhibit 1**). Construction of the cable was completed in May 2009.

In its original approval of the project, the Commission required AT&T to bury the cable in soft sediment, where feasible, to minimize interference with commercial fishing gear and prevent whale entanglements. The Commission also required 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 would survey those portions of the cable route from the mean high tide line to federal waters out to the 1,000-fathom depth contour to verify that the cable has remained buried consistent with the as-built cable burial plan. The Commission further required that if previously buried cable became unburied, AT&T would rebury the cable.

In addition to CDP E-08-021/CC-005-09, between 2000 and 2009 the Commission approved the installation of eight other marine fiber optic cable systems (generally, traversing through the southern part of the Central Coast—Morro Bay—or the Southern California Bight, with one also offshore the Monterey Bay Aquarium Research Institute). The CDPs for each of these cables included requirements to bury the cable in soft sediment, to perform periodic surveys (every 18 to 24 months) to determine if the cable remained buried, and to rebury sections of previously buried cable that had become exposed. By 2005, most of the fiber optic cable companies had completed two cable surveys. As a result, between 2006 and 2014 the Commission approved amendments to each of the eight permits originally issued between 2000 and 2009 to extend the required cable burial survey interval from once every 18 to 24 months to every five years.

In 2016, the Commission approved a new fiber optic cable landing in Hermosa Beach and passing through the Southern California Bight (CDP 9-16-0160/CC-0002-16). This permit altered the 18 to 24 month cable burial survey interval to require surveys every five years.

Also in 2016, the Commission approved an amendment to an existing permit (CDP E-98-027-A4) requiring periodic surveys of undersea cables only after an event or physical phenomenon that could result in a cable becoming unburied, rather than every five years. Findings associated with this amendment noted that the 2001 post-lay inspection survey for that particular cable and four periodic inspection surveys completed in 2003, 2005, 2010, and 2015 demonstrated that the buried portions of the cable had remained buried. Additionally, the findings noted the reduction in environmental effects resulting from the surveys, such as reducing air emissions from survey vessels and decreasing potential conflicts with commercial fishing vessels along the survey routes.

Since 2016, the Commission has approved four other marine fiber optic cables that traverse the Southern California Bight. In these cases, the Commission has required that five years after cable installation, applicants perform a burial survey to determine if cables have remained buried consistent with the as-built conditions. The Commission has included a requirement that subsequent burial surveys (after the five years post-construction survey) occur only after an event with the potential to affect the cable, defining an event as:

an incident or activity (such as a gear snag), the circumstances of which indicate the likelihood that the previously buried cable has become unburied; an act of God, such as a severe earthquake in the vicinity of the cables that could cause deformation of the sea floor or underwater landslides; or any other significant event that could cause excessive ocean floor scouring.

AT&T is proposing this amendment to permit E-08-021 to modify the burial survey requirements in a manner similar to those placed on cable permits since 2016.

B. PROPOSED AMENDMENT AND CONSISTENCY CERTIFICATION MODIFICATION

Special Condition 8 of the original coastal development permit (CDP) E-08-021 required periodic cable inspections in State waters 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 had not remained buried). In its consistency certification (CC-005-09), AT&T committed to performing burial surveys in similar fashion for the cable segments in federal waters.

Surveys for this cable conducted in 2010 and 2015 have indicated that the cable has remained buried since installation. The surveys have found that burial depths were at times greater than the as-laid burial depth because of natural settlement of the cable and sedimentation. The surveys have not found any indication the cable has been dragged or moved. AT&T therefore proposes to eliminate the requirement to survey the cable every five years and replace it with a requirement to survey only after an event with the potential to affect the cable, using the same definition of “event” that the Commission has applied in the CDPs for fiber optic cables since 2016.

The proposed revised special condition set forth below would supersede and replace **Special Condition 8** approved by the Commission in CDP E-08-021. The revisions are illustrated by strikethroughs for deletions and underlining for additions. All other requirements of the Commission’s approval of CDP E-08-021, including but not limited to the Standard Conditions set forth in Appendix A of the Commission’s findings for CDP E-08-021, remain in full force and effect with respect to the amended project.

- 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)~~ After any event that has the potential to affect the

cables, AT&T shall survey those potentially affected 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 rebury 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.

“Event” for the purposes of this condition is defined as: an incident or activity (such as a gear snag), the circumstances of which indicate the likelihood that previously buried cable has become unburied; an act of God, such as a severe earthquake in the vicinity of the cables that could cause deformation of the sea floor or underwater landslides; or any other significant event that could cause excessive ocean floor scouring. The applicant shall notify the Executive Director in writing within 10 days of the reporting or other identification of a qualifying event. This notification shall describe the location and nature of the qualifying event and the proposed survey, including survey location and timing and the survey data collection and/or analysis techniques that will be employed to ensure that survey results will facilitate comparison with the as-built survey (i.e., by minimizing discrepancies in the portrayal of survey results that stem from different survey methodologies or data analysis techniques). Following Executive Director approval of the proposed survey, the applicant shall schedule a survey at the soonest available opportunity, subject to vessel availability, weather conditions, and related operational conditions affecting the survey. Starting in 2020, and once every five years thereafter, in the absence of an event that would trigger a cable survey as described above, the applicant shall submit a written statement to the Executive Director confirming that no qualifying event has occurred since the prior cable survey and that no other conditions or changes have occurred that would affect the burial status of the segments of the cable that were documented as buried in the post-lay survey and subsequent cable surveys.

AT&T also proposes to modify its consistency certification to apply the language in the above revised condition to the portion of the cable in federal waters.

C. OTHER AGENCY APPROVALS AND TRIBAL CONSULTATIONS

State Lands Commission

The applicant entered into a lease (No. 8144.1) with the State Lands Commission (SLC) that authorized the laying of the subject cable across State-owned submerged lands and tidelands. This lease originally required periodic surveys on the same schedule as the existing requirement of **Special Condition 8** of the CDP (as outlined above). In June 2018, the applicant applied to the SLC to revise the survey requirements of its lease consistent with the proposed CDP amendment described above; the SLC approved this application at its December 2018 meeting. The SLC lease continues to give the SLC authority to require the applicant to perform additional surveys of the cable in the event of natural or human-caused events that may uncover and expose the cable.

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.

Section 30234.5 of the Coastal Act 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 focused on 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 fishing nets may get snagged by the cable and entangle and drown marine mammals or other marine wildlife. In CDP E-08-021, the Commission required **Special Condition 8** to help ensure that the cable remained buried to reduce the possibility of adverse impacts to marine mammals and commercial fishing from entanglement with the cables.

The proposal to conduct regular cable burial surveys following their installation was first advanced in 1998 by affected commercial fishermen. In response to fishermen's concerns, the cable companies agreed to survey the cable route at least every two years. The Commission required **Special Condition 8** to be consistent with the agreement reached with the fishermen.

Since the cable was installed, AT&T has submitted two cable burial surveys from 2010 and 2015. The results of these surveys continue to show that the burial status of the cable has not

changed significantly since its installation. These data are consistent with data from surveys of other marine optic cables approved by the Commission that show that the burial status of cables installed offshore of southern California have not changed significantly with time.

Based on this information, AT&T now proposes to eliminate the requirement to survey the cable every five years and replace it with a requirement to survey only after an event with the potential to affect the cable, defining an event as “an incident or activity (such as a gear snag), the circumstances of which indicate the likelihood that the previously buried cable has become unburied; an act of God, such as a severe earthquake in the vicinity of the cables that could cause deformation of the sea floor or underwater landslides; or any other significant event that could cause excessive ocean floor scouring.”

As described above, **Special Condition 8**, which required periodic burial surveys of the AT&T cable, was included in CDP E-08-021 and CC-005-09 to reduce the potential for three types of impacts: 1) whales may become entangled with the cable; 2) trawlers may snag their gear on a cable and thus lose gear and fishing time; and/or 3) abandoned fishing nets may get snagged by the cable and entangle and drown marine mammals or other marine wildlife. In general, data from these burial surveys indicate that the potential for these three types of impacts was avoided at least in part because the cable was installed below the seafloor and has remained buried in the intervening years. Survey results indicate that once installed and buried in the sediment, the cable has not moved or become exposed. In support of this conclusion, according to AT&T there have been no claims of fishing gear entanglements or other similar impacts since the cable was installed. Additionally, the members of the Central California Joint Cable/Fisheries Liaison Committee support the proposed changes to **Special Condition 8** (see **Exhibit 2**). In addition, the two cable burial surveys in 2010 and 2015 have not found any indication of snagged fishing gear or entanglements.

Current fishing methods and equipment pose less of a risk of interaction with subsea fiber optic cables than trawling. While there are active fisheries in the project area, fishing regulations have generally restricted trawling activity, resulting in changes to the fishing fleet in the Morro Bay community to a smaller fleet with a wide diversity of target species and gear types (Padre Associates Inc. 2018). Three common fishing methods in the project area are baited traps, line catch, and seine nets. Line catch and seine nets (such as used for market squid) have minimal to no interaction with the seabed and thus are not susceptible to adverse impacts associated with the bottom-laying cable. Baited traps (such as used for Dungeness crab) consist of a metal or plastic trap on the seafloor with a line attached to a surface buoy. No trap or line snags with the installed cable have been reported by fishermen, and the impacts to fishermen because of snags and lost fishing time and/or gear is expected to remain insignificant.

Additionally, the burial surveys result in impacts to marine resources and fishing. Survey vessels required to conduct the surveys generate emissions including criteria pollutants, carbon dioxide, and other greenhouse gases. During transit to and from the project site, and during the surveys, survey vessels have the potential to collide with marine mammals and/or result in marine species' avoidance of the project area while surveys are being conducted. Finally, the presence of survey vessels creates a nuisance for fishermen who are forced to avoid the survey areas or remove traps along the survey route in advance of the surveys and while the survey is occurring.

In the interest of avoiding this disturbance, as mentioned previously commercial fishermen support the proposed amendment (**Exhibit 2**).

The Commission agrees with AT&T that adverse impacts to marine resources and fisherman are not likely to be significant in the future, as long as the cable remains buried. Survey data from the last fifteen years (that was not available when the cable was first approved) indicate that under normal oceanic conditions offshore southern California, the cable is not expected to move or become exposed. Under these circumstances, the adverse impacts caused by surveys are likely to outweigh the benefit of conducting the surveys. Thus, marine resources and fishing activities are best protected by removing the requirement for periodic surveys. It is important to note, however, that these conclusions rely on the persistence of normal oceanic conditions and the absence of any unanticipated incident or event that has the potential to expose the cable. To address this concern, the amendment to **Special Condition 8** includes language that requires AT&T to conduct a cable survey after an event, such as an earthquake or tsunami or a gear snag, which has the potential to expose the cable. Further, AT&T is required to submit a statement to the Executive Director every five years confirming that no qualifying event has occurred and that no other conditions or changes have occurred that would affect the burial status of the cable.

With the amended condition in place, marine resources and fishing interests will continue to be protected. The Commission therefore finds that eliminating the requirement for periodic surveys but retaining the requirement that the applicant conduct a survey after an event that has the potential to expose the cable is consistent with the marine resources and commercial fishing policies (Sections 30230 and 30234.5, respectively, of the Coastal Act).

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The State Lands Commission, acting as lead CEQA agency, certified an Environmental Impact Report for the proposed project on March 2, 2009.

In CDP E-08-021, the proposed development was conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing marine resources, dredge and fill of coastal waters, water quality, oil spills, ESHA, commercial and recreational fishing, public access and recreation, air quality, and cultural resources were incorporated to minimize all adverse environmental impacts. The Commission found that as conditioned, there were no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission found that the proposed project as fully

conditioned to be consistent with the provisions of CEQA. Based on information derived from surveys that have been performed thus far, elimination of periodic burial surveys will not materially increase the likelihood of the environmental effect that the surveys are intended to detect, namely, the uncovering of the cable. Further, 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). Thus, the amendment to CDP E-08-021 incorporates mitigation measures to avoid any significant environmental effects under the Coastal Act and CEQA.

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

Coastal Development Permit Application and Federal Consistency Certification Materials:

California Coastal Commission. Final Adopted Findings for CDP Application E-08-021 and Consistency Certification CC-041-00, approved March 13, 2009.

Paul Hastings LLP. Response to Notice of Incompleteness for Amendment to Coastal Development Permit (CDP) E-08-021 for Construction and Operation of the AT&T Asia-America Gateway Segment 5 Fiber Optic Cable, dated January 23, 2019.

Paul Hastings LLP Application to amend Coastal Development Permit E-08-021 and modification to Consistency Certification No. CC-005-08, dated June 28, 2018.

Other Documents:

Padre Associates Inc. Analysis of Commercial Fisheries Lease Amendment Proposal: Segment 5 (CDP-E-08-021-A1). September 2018.