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## STAFF REPORT: PERMIT AMENDMENT/ CONSISTENCY CERTIFICATION

**Application No.:** E-01-029-A5

**Consistency Certification No.:** CC-111-01

**Applicant:** GU Holdings, Inc.

**Location:** State and federal waters offshore of Hermosa Beach, Los Angeles County (**Exhibit 1**)

**Project Description:** Amend **Special Condition 18** of the amended permit and modify consistency certification CC-111-01 to require periodic surveys of already installed underwater cables only after an event or physical phenomenon that could result in a cable becoming unburied, rather than the current practice of every five years.

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

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## SUMMARY OF STAFF RECOMMENDATION

In July 2002, the Commission approved coastal development permit (CDP) E-01-029 and concurred with consistency certification CC-111-01 for Tyco Networks (US), Inc. to install, operate, and maintain two fiber optic cables landing at Hermosa Beach in Los Angeles County (**Exhibit 1**). One of these cables, Segment 4 which connects to Hawaii, was not completed until 2009. In 2012, GU Holdings, Inc. (GU Holdings) assumed ownership of the Segment 4 cable, including the responsibility of complying with the conditions set forth in CDP E-01-029.

Key Coastal Act issues addressed in the findings for the original permit and consistency certification include 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 get snagged on a cable and subsequently entangle and drown marine mammals or other marine wildlife. To prevent potential adverse impacts associated with entanglement, **Special Condition 7** of the original permit required the permittee to bury the cable to a depth of 1.0 meter except where precluded by seafloor substrates. **Special Condition 18** of the original permit required that every 18 to 24 months for the life of the project, the permittee shall survey the cable routes to verify that the cables remained buried. If the cable survey indicates that previously buried cable has become unburied, the applicant is required to re-bury the cable segments. In December 2014, the Commission approved E-01-029-A4, which amended **Special Condition 18**, and concurred with modified consistency certification CC-111-01 to require periodic cable burial surveys every five years.

The results of the 2009 post-lay inspection survey and two periodic surveys completed in 2011 and 2013 demonstrate that buried cable remains buried. GU Holdings proposes to eliminate the requirement to survey the cables 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 to instead survey the cable only after a natural or anthropogenic event that has the potential to expose the cable (e.g., 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 South Bay 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-01-029-A4 and **concur** with GU Holdings' modified consistency determination.

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## **EXHIBITS**

Exhibit 1 – Project Overview

Exhibit 2 – Letter from the South Bay Cable/Fisheries Liaison Committee, Inc.

## **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-01-029-A4 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 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 GU Holdings' modified Consistency Certification CC-111-01 on the grounds that, as modified, the project 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 GU Holdings' modification of Consistency Certification CC-111-01 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 July 2002, the Commission approved a coastal development permit (CDP) E-01-029 and concurred with consistency certification CC-111-01 for Tyco Networks, Inc. (Tyco) to install, operate, and maintain two fiber optic cables landing in the City of Hermosa Beach in Los Angeles County (**Exhibit 1**). One cable (Segment 4) landed in Hawaii and the other cable (Segment 5) landed in Oregon. Segment 4 was installed out to federal waters in 2002 and abandoned until its installation was completed in 2009; Segment 5 was installed in 2009. In 2005, Tyco transferred ownership of the Segment 5 cable to Tata Communications (US) Inc. (Tata). In 2012, Tyco transferred ownership of the Segment 4 cable to the Unity consortium, which appointed GU Holdings, Inc. (GU Holdings) as its Agent to act on its behalf with respect to all matters relating to CDP E-01-029. In February 2012, CDP E-01-029, as it applies to the Segment 4 cable, was officially assigned to GU Holdings.

In its original approval of the project, the Commission required the permittee 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 18 to 24 months, the permittee would survey those portions of the cable route from the mean high tide line into federal waters out to the 1,800-meter depth contour to verify that the cables remained buried consistent with the as-built cable burial plan. The Commission further required that if previously buried cable became unburied, the permittee would rebury the cable.

In addition to CDP E-01-029/CC-111-01, between 2000 and 2009 the Commission approved the installation of eight other marine fiber optic cable systems (most traversing through 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 fiber optic cable companies had completed two cable surveys for their cables, and these surveys indicated that buried cable remained buried and stable. As a result, between 2006 and 2014 the Commission approved amendments to the original permits to extend the required cable burial survey interval from once every 18 to 24 months to every five years; this included amending CDP E-01-029/CC-111-01 in December, 2014.

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 following installation.

Also in 2016, the Commission approved an amendment to an existing permit (CDP E-98-027-A4) requiring periodic surveys of existing 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 subsequent 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 (landing in Hermosa Beach and Dockweiler State Park, Los Angeles County). 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 also has included an additional requirement that subsequent burial surveys 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.*

GU Holdings is proposing this amendment to permit E-01-029 Condition 18 (as amended in E-01-029-A4) to modify the burial survey requirements in a manner similar to the burial survey conditions placed on cable permits since 2016.

## **B. PROPOSED AMENDMENT AND CONSISTENCY CERTIFICATION MODIFICATION**

**Special Condition 18** of CDP E-01-029 required periodic cable surveys in State waters every 18 to 24 months. In its consistency certification (CC-111-01), Tyco/GU Holdings committed to performing burial surveys in a similar fashion for the cable segments in federal waters.

The results of the 2009 post-lay inspection survey and two periodic surveys completed in 2011 and 2013 demonstrate that buried cable remains buried. The surveys found that in areas where the cable was buried in soft sediment, burial depths were often greater than the as-laid burial depth due to natural settlement and sedimentation over time. In areas where the cable was laid on the surface, the cable was often covered in a fine layer of sediment. The surveys did not find any indication that the cable had been dragged or moved, a conclusion supported by anecdotal information provided in 2019 by area fishermen (see **Exhibit 2** for a February 7, 2019 letter from the South Bay Cable Fisheries Liaison Committee, Inc.).

GU Holdings therefore proposes to reduce the frequency of the periodic surveys for the Segment 4 cable in state and federal waters from once every five years, and instead require a 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 18** approved by the Commission in CDP E-01-029-A4 as it applies to the GU Holdings Segment 4 cable. The revisions are illustrated by strikethroughs for deletions and underlining for additions. All other requirements of the Commission's approval of CDP E-01-029-A4 remain in full force and effect with respect to the amended project.

- 18. Cable Surveying.** ~~Every 5 years for the life of project,~~ After any event that has the potential to affect the cables, the applicant shall survey the cable route to verify that the cables have remained buried consistent with the as-built cable burial plan required by Special Condition 9. The survey shall be conducted with a remotely operated vehicle ("ROV") equipped with video and still cameras and by a party approved by the Executive Director. Within 30 days of survey completion, the applicant shall submit to the Executive Director 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 required by Special Condition 9, the applicant shall, within 30 days of survey completion, submit to the Executive Director for approval a plan to re-bury those cable segments.

"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.

GU Holdings 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

### City of Hermosa Beach

The City of Hermosa Beach (City) was legislatively granted the submerged lands offshore of Hermosa Beach pursuant to Chapter 479, Statutes of 1919. These lands were transferred in trust to the City by the Legislature to be used for certain limited purposes including navigation, commerce and fisheries. Additionally, because these lands were granted in trust, any revenues generated on or from these granted lands must be expended for the purpose of promoting or improving these lands. The City acted as lead agency under the California Environmental Quality Act (CEQA) and as the lessor for the project both onshore and offshore for submerged lands to the limit of State waters.

The Hermosa City Council issued a City Council Resolution certifying a Final Environmental Impact Report and approving a precise development plan and planned development permit for the project on December 18, 2001. According to a letter from the City on March 25, 2019, the City does not require modifications to its original authorization for the proposed change to burial survey frequencies (City of Hermosa Beach 2019).

## 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 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-01-029/CC-111-01, the Commission required **Special Condition 18** to help ensure that the cables remained buried to reduce the possibility of such impacts.

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 routes at least every two years. The Commission required **Special Condition 18** in its approval of CDP E-01-029/CC-111-01 to be consistent with the agreement reached with the fishermen.



Since the cable was installed, cable burial surveys occurred in 2011 and 2013 following the 2009 post-lay inspection survey. The survey results 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 has not changed significantly with time.

Based on this information, GU Holdings 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 18**, which required periodic burial surveys of the subject cable, was included in CDP E-01-029/CC-111-01 to reduce the potential for three types of impacts: 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 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 GU Holdings there have been no claims of fishing gear entanglements or other similar impacts since the cable was installed (ERM 2019). Similarly, the cable burial surveys have not found any indication of snagged fishing gear or entanglements. Additionally, the members of the South Bay Cable/Fisheries Liaison Committee support the proposed changes to **Special Condition 18** (see letter from this committee in **Exhibit 2**).

Additionally, the burial surveys result in impacts to marine resources and fishing. Survey vessels that 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. As mentioned previously commercial fishermen support the proposed amendment in the interest of avoiding this disturbance (**Exhibit 2**).

The Commission agrees with GU Holdings that future adverse impacts to marine resources and fisherman are not likely to be significant, as long as the cable remains buried. Survey data from the last fifteen years (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 periodic survey requirement. It is important to note that these conclusions rely on the persistence of normal oceanic conditions and the absence of any unanticipated incident or event with the potential to expose the cable. To address this concern, the amendment to **Special Condition 18** requires GU Holdings to conduct a survey after an event, such as an earthquake, tsunami, or gear snag, with the potential to expose the cable. Further, GU Holdings 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 City of Hermosa Beach, acting as lead CEQA agency, certified a Final Environmental Impact Report for the proposed project on December 18, 2001.

In CDP E-01-029 and the first four permit amendments, 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 was 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, CDP E-01-029-A5 will not have any significant environmental effects under the Coastal Act and CEQA, and the amendment is consistent with CEQA.

**APPENDIX A: SUBSTANTIVE FILE DOCUMENTS**

**Coastal Development Permit Application and Federal Consistency Certification Materials:**

ERM on behalf of GU Holdings, Inc. Application to amend Coastal Development Permit E-01-029-A4 and modify Consistency Certification No. CC-111-01, on behalf of GU Holdings Inc., dated March 27, 2019.

ERM. 2019. Response to Notice of Incompleteness for Amendment to Coastal Development Permit (CDP) E-01-029-A4 and Modified Consistency Certification CC-111-01 for Construction and Operation of the Unity Transpacific Fiber Optic Cable System, dated June 24, 2019.

California Coastal Commission. Final Adopted Findings for CDP Application E-01-029 and Consistency Certification CC-111-01. June 21, 2002 (approved July 11, 2002).

**Other Documents:**

City of Hermosa Beach. Letter to CCC re: Submarine Fiber Optic Cable Burial Survey Frequency Amendment to Coastal Development Permit. March 25, 2019.

South Bay Cable/Fisheries Liaison Committee, Inc. Letter to CCC re: Coastal Coastal Development Permit application No. E-01-029 and Consistency Certification No. CCC-111-01 as amended. February 7, 2019.