

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
FAX (415) 904-5400
TDD (415) 597-5885



W12a13a

Filed:	2/28/20
180 th Day:	8/26/20
CC Filed:	2/28/20
3 Months (CC):	5/28/20
6 Months (CC):	8/28/20
Staff:	JW-SF
Staff Report:	4/24/20
Hearing Date:	5/13/20

STAFF REPORT: PERMIT AMENDMENT/ CONSISTENCY CERTIFICATION

Application No.: E-01-029-A6

Consistency Certification No.: CC-111-01

Applicant: Tata Communications America Inc.

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

Project Description: Amend **Special Condition 18** of CDP E-01-029 and modify consistency certification CC-111-01 to require periodic surveys of already installed underwater fiber optic 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.

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**), including one (known as Segment 5) connecting to Oregon. In 2005, Tyco transferred ownership of the Segment 5 cable to Tata Communications (US) Inc.

Key Coastal Act issues addressed in the findings for the original permit and consistency certification include potential adverse effects of cable entanglement with whales and fishing gear, particularly abandoned trawl nets and active trawling operations. 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 2010, this permit was amended to require such surveys every five years.

The results of the post-lay inspection survey and three periodic surveys since 2004 demonstrate that buried cable remains buried. Tata Communications America Inc. proposes to eliminate the current 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 survey routes. The South Bay Cable/Fisheries Liaison Committee supports the proposed amendment.

Commission staff recommends that the Commission **approve** the proposed amendment (E-01-029-A6) and **concur** with Tata Communications America Inc.'s modified consistency determination.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	4
II. FINDINGS AND DECLARATIONS	5
A. Background.....	5
B. Proposed Amendment and Consistency Certification Modification	6
C. Consultations and Other Agency Approvals	8
D. Marine Resources and Commercial Fishing.....	8
E. California Environmental Quality Act	10
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS	11

EXHIBITS

Exhibit 1 – Project Overview

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 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 Tata Communications America Inc. 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 Tata Communications America Inc.'s modification of Consistency Certification CC-111-01 on the grounds that, as modified, the project will 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**), including a connection landing in Oregon, known as Segment 5. In 2005, Tyco transferred ownership of Segment 5 to Tata Communications (America) Inc.

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 2010, the Commission approved CDP amendment E-01-029-A3¹, requiring periodic surveys of the Segment 5 cable every five years.

In addition to CDP E-01-029/CC-111-01, between 2000 and 2009 the Commission approved the installation of seven other commercial fiber optic cable systems traversing Morro Bay or the Southern California Bight. 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.

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 four post-installation surveys of the installed cable demonstrated that the buried portions of the cable had

¹ Since 2010, the Commission also has approved CDP Amendments E-01-029-A4 and E-01-029-A5, specific to the other cable that was originally included in CDP E-01-029 but that is under different ownership. Because those two amendments do not apply to this Tata Communications cable, this amendment is numbered E-01-029-A6, as it builds off of E-01-029 and the first three amendments to the permit.

remained buried. Additionally, the findings noted the reduction in environmental effects resulting from burial 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 and land in Hermosa Beach or 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.

Tata Communications America Inc. is proposing this amendment to **Special Condition 18** of E-01-029 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, as amended by E-01-029-A3, required periodic cable surveys in State waters every five years. In its consistency certification (CC-111-01), Tata Communications America Inc. committed to performing burial surveys in a similar fashion for the cable segments in federal waters.

The results of the 2002 post-lay inspection survey for the Segment 5 cable and three periodic surveys completed in 2007, 2009, and 2015 demonstrate that buried cable remains buried. The surveys did not find any indication that the cable had been dragged or moved, a conclusion supported by anecdotal information from area fishermen (South Bay Cable Fisheries/Liaison Committee 2019).

Tata Communications America Inc. therefore proposes to reduce the frequency of the periodic surveys for the Segment 5 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**. 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, as modified by amendments 1 through 3, remain in full force and effect with respect to the amended project.

- 18. Cable Surveying and Reburial.** ~~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 (including example still images) and a copy of the video videotape(s) recorded during the cable survey. The video 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 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. Upon approval of the plan by the Executive Director, the applicant 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 August 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.

Tata Communications America Inc. also proposes to modify its consistency certification to apply the language in the revised condition to the cable portion 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. 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.

Cable burial surveys in 2007, 2009, and 2015 continue to show that the burial status of the Segment 5 cable has not changed significantly since its installation. These data are consistent with data from surveys of other marine fiber optic cables approved by the Commission in this region that show that the burial status of cables installed offshore of southern California has not changed significantly with time. Based on this information and consistent with requirements for other fiber optic cable systems recently approved by the Commission, Tata Communications America Inc. now proposes to require a cable survey only after an event with the potential to affect the cable, as described previously.

In addition to the data from the burial surveys indicating no change in the burial status, there have been no claims of fishing gear entanglements or other similar impacts since the cable was installed. Similarly, cable burial surveys have not found indications of snagged fishing gear or entanglements. The members of the South Bay Cable/Fisheries Liaison Committee support the proposed changes to **Special Condition 18** (South Bay Cable/Fisheries Liaison Committee 2019).

Burial surveys could result in impacts to marine resources and fishing. Survey vessels 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 can create a nuisance for fishermen who are forced to avoid survey areas or remove traps along the survey route.

Based on cable burial survey results and the lack of claims related to fishing impacts, future adverse impacts to marine resources and fisherman are not likely to be significant, as long as the cable remains buried. Furthermore, 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. 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 Tata Communications America Inc. to conduct a survey after an event, such as an earthquake, tsunami, or gear snag, with the potential to expose the cable. Further, Tata Communications America Inc. 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 Sections 30230 and 30234.5 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, 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-A6 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:

Tata Communications America Inc. Application to amend Coastal Development Permit E-01-029 and modify Consistency Certification No. CC-111-01, dated December 12, 2019.

Tata Communications America Inc. Response to Notice of Incompleteness for Amendment E-01-029-A6 and Modified Consistency Certification CC-111-01 for Construction and Operation of the Unity Transpacific Fiber Optic Cable System, dated February 20, 2020.

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. February 6, 2020.

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.