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## STAFF REPORT: PERMIT AMENDMENT

**Application No.:** E-00-008-A5

**Applicant:** Zayo Group Holdings, Inc.

**Location:** State waters offshore of Morro Bay, Santa Barbara, Manhattan Beach and San Diego ([Exhibit 1](#))

**Project Description:** Modify permit condition to require surveys of already installed underwater cables in State waters only after an event or physical phenomenon that could result in a cable becoming unburied, rather than every 18-24 months, as originally required.

**Staff Recommendation:** Approve permit amendment.

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## SUMMARY OF STAFF RECOMMENDATION

In December 2000, the Commission approved, with conditions, coastal development permit (CDP) E-00-008 and concurred with consistency certification CC-110-00 for Global West Network, Inc. (Global West), to install, operate, and maintain a fiber optic cable system in state and federal waters along the California coastline ([Exhibit 1](#)). Global West did not comply with several of the conditions of its CDP, even after numerous compliance efforts and enforcement actions by the Commission. Ultimately, Global West went bankrupt and its cable was transferred and sold over time to a variety of different companies. After these changes in ownership, the full suite of condition

compliance issues continued to remain unresolved, including payment of mitigation fees and completion of seafloor and cable surveys. However, the fiber optic cable system's current owner, Zayo Group Holdings, Inc. (Zayo), have demonstrated to Commission staff a commitment to resolve the remaining compliance issues and adhere to the terms of this permit. For example, in August 2020, it completed a survey of the cable segments in state waters, as required under [Special Condition 6](#), to confirm that previously buried sections of cable remained undisturbed and buried. In addition, Zayo also provided the required annual funding to fishing organizations in 2019 and 2020. Currently, Zayo has addressed all applicable condition compliance issues and has committed to remaining in good standing moving forward.

As discussed in the findings for the original permit and consistency certification, efforts to bury the cable and keep it buried were critical to the Commission's authorization because they were key to addressing concerns related to potential adverse effects on coastal resources due to entanglement with the cables. Specifically, the findings discussed and addressed concerns that: 1) whales may become entangled with an exposed cable while foraging on or near the seafloor; 2) trawlers may snag their gear on a cable and thus lose that 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 address these issues, the Commission included **Special Condition 4** in the original permit to require the permittee to bury the cable to a depth of 1.0 meter except where precluded by seafloor substrates. Additionally, the Commission also included [Special Condition 6](#) in the original permit to require the permittee, every 18 to 24 months for the life of the project, to survey the cable routes and verify that the cables remained buried. If the cable surveys indicate that any segments of previously buried cable have become unburied, [Special Condition 6](#) also requires the permittee to re-bury those cable segments.

Although Global West never completed any of the follow-up burial confirmation surveys required in [Special Condition 6](#), once Zayo came into possession of the cable and associated permit and consistency certification, it immediately carried out the required survey. The results of that survey conducted in August 2020 demonstrate that all previously buried cable segments remained buried, despite the passage of roughly 20 years between burial and follow-up survey.

In light of these results and similar results from surveys carried out on other cables offshore of California over the past decade, Zayo proposes to eliminate the requirement to survey the cables every 18-24 months and replace it with a requirement to survey only after an event or physical phenomenon that could result in a cable becoming unburied. This approach is consistent with recent Commission action on cables offshore such as those at Grover Beach (E-98-027-A4), Hermosa Beach (E-01-029-A6), and Manchester Beach (E-00-004-A2) and reflects the Commission and cable operators' evolving understanding of seafloor conditions affecting cable burial. Since buried cables have remained buried over time and no conflicts have been reported since their installation, eliminating periodic burial surveys and instead requiring surveys only after a natural or anthropogenic event that has the potential to expose the cable (e.g., seismic

activity or gear snag) would not reduce protection of coastal resources. Furthermore, eliminating the periodic burial surveys would 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 therefore recommends that the Commission **approve** the proposed amendment to coastal development permit E-00-008. Because the modified permit condition applies only to the portion of the cable in state waters, a change to the consistency certification is not proposed or required.

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[Exhibit 1](#) – Map of Cables/Landings

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. E-00-008 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.*

## II. FINDINGS AND DECLARATIONS

### A. BACKGROUND

In December 2000, the Commission approved coastal development permit (CDP) E-00-008 and concurred with consistency certification CC-110-00 for Global West Network, Inc.(Global West) to install, operate, and maintain an offshore fiber optic cable system in state and federal waters offshore of California with segments leading onshore at Morro Bay, Santa Barbara, Manhattan Beach, and San Diego ([Exhibit 1](#)). This CDP was subsequently amended four times:

- E-00-008-A1 (2001) - To directionally drill two 5-inch diameter fiber optic cable conduits at the North Point Natural Area parking lot near Toro Lane in Morro Bay. The conduits extend 2,800 ft offshore and 100 ft. below the sea floor. Additionally, to construct a 10 ft x 9 ft x 9 ft manhole and utility vault under the parking lot and pull fiber optic cable through the conduits.
- E-00-008-A2 (2001) - To authorize cable to be pulled through existing conduit on Pacific Beach Drive from cable landing along Strand Way to Wave Crest

Court and then east along Wave Crest Drive (San Diego) for approximately 35-40 ft.

- E-00-008-A3 (2001) - For temporary installation of TruTracker system to guide the location of a drill bit during horizontal directional drilling operations.
- E-00-008-A4 (2002) - To extend the compliance deadline for Special Condition 12 and specify that completion of the required full hard bottom survey would be accomplished before August 31, 2002 and completion of the Santa Barbara segment would be accomplished before May 15, 2002.

### **Violation History**

Global West, the original permit holder, failed to comply with many of the required conditions of its CDP. On June 11, 2002, the Commission sent a Notice of Intent (NOI) to commence a Cease and Desist Order to compel compliance with these conditions. Subsequent to receiving the NOI letter, Global West satisfied some (but not all) of the outstanding conditions of its permit and entered into a Settlement Agreement with the Commission. As established by that Agreement: 1) Global West was to pay \$50,000 to two Fishing Associations; 2) Global West was to pay \$208,835.44 for mitigation of adverse impacts to seafloor habitats; 3) Global West was to survey the previously unsurveyed portion of the cable route when it conducted its first post-installation cable burial survey; 4) if Global West did not complete its survey on time, it was to pay a late fee of \$1,000/day; 5) Global West was to recalculate, in accordance with the standards in the permit, the hard bottom mitigation fee after the new survey and, if necessary, was to pay additional fees; and 6) Global West was to pay a penalty of \$100,000 to the Commission's Violation Remediation Account (VRA).

In August of 2003, the Coastal Commission received the first of three agreed upon payments of \$33,000 each for the settlement of the \$100,000 penalty. This payment was followed shortly thereafter by the second of the three required payments. However, the third and final payment was never submitted. In addition, Global West missed the deadline for completing its required seafloor survey and therefore began to accrue additional late fees. These late fees were never submitted, and the survey was never carried out. Further, Global West also did not provide the required \$50,000 payments to the Fishing Committees, as required by the Settlement Agreement. As such, by 2004 Global West was in violation of both its CDP and the Settlement Agreement. It had not paid the mitigation and penalty fees it was required to pay, and the seafloor survey remained outstanding. Shortly thereafter, Deutsche Bank assumed ownership of Global West and the case was referred to the Attorney General's office for litigation. At that time, Global West owed approximately \$300,000 and it still had not carried out the seafloor survey so was continuing to accrue penalties.

In 2007, a default judgement against Global West was made. This included requirements for Global West to comply with its CDP conditions and to pay a \$1.4 million penalty. However, as the company, Global West, was no longer in existence, the Commission was not able to enforce the judgment. Although the enforcement action was never consolidated with the bankruptcy litigation, when the Commission tried to

enforce the judgment, the courts ruled that it could not do so as a result of the bankruptcy.

Over the subsequent years, ownership of the cable changed several times, from OpticAccess, LLC to X2 Telecom then Integra, then Electric Light, and most recently, Zayo. Through discussions with Commission staff, Zayo understood that it needed to comply with the conditions of the CDP for the cables in order to operate them. In particular, it needed to complete a seafloor survey, and the conditions of the Fishing Agreement needed to be upheld. Zayo completed the survey in August 2020 and has confirmed that annual Fishing Agreement payments were made in 2019 and 2020.

### **Other Offshore Cables**

In addition to CDP E-00-008/CC-110-00, 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 seafloor 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 several of the original permits—including for cables off of Hermosa Beach (E-01-029-A4) and Manchester Beach (E-00-004-A1)—to extend the required cable burial survey interval from once every 18 to 24 months to every five years. Due to the complex history of the Global West/Zayo permit, however, its CDP was not among those amended to the “every five year” provision.

In 2016, the Commission approved a new fiber optic cable through the Southern California Bight, landing in Hermosa Beach (CDP 9-16-0160/CC-0002-16). Consistent with those previous CDP amendments, this permit required burial confirmation seafloor surveys every five years following installation.

Also in 2016, the Commission approved an amendment to an existing permit (CDP E-98-027-A4) for an offshore cable that changed the periodic survey requirement to only after an event or physical phenomenon capable of causing a cable to become 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 several other marine fiber optic cables that traverse the Southern California Bight landing in Hermosa and Dockweiler State Park,

Los Angeles County and one in Northern California (Humboldt Co.).<sup>1</sup> 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.*

Zayo is proposing this amendment to permit E-00-008 [Special Condition 6](#) to modify the burial survey requirements in a manner similar to the burial survey conditions placed on cable permits since 2016. Despite past violations with respect to this cable, the current owners have demonstrated a commitment to the terms of the permit, and thus staff concludes that the change to [Special Condition 6](#) is warranted and consistent with similar actions approved by the Commission in recent years.

## **B. PROPOSED AMENDMENT**

[Special Condition 6](#) of CDP E-00-008 required periodic cable surveys in State waters every 18 to 24 months. Currently, this permit's surveys are not required or completed in federal waters. The Commission cannot change this original permit condition without an amendment request from the applicant.

The results of the 2001 post-lay inspection survey and 2020 confirmation survey on the former Global West cable demonstrate that all buried cable segments remain buried. The surveys did not find any indication that the cable had been dragged or moved. No comment has been received from Fishing Organizations on interaction with the cable, and none have been reported through the fishing liaison.

Zayo therefore proposes to reduce the frequency of the periodic surveys for its cable system in state waters from once every 18-24 months to 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.

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<sup>1</sup> Cables approved include:

- 9-16-0160/CC-0001-16, 9-18-0593/CC-0008-18, 9-18-1211/CC-0010-18 and 9-19-0880/CC-0004-19: Hermosa Beach.
- 9-17-0389/CC-0004-17 and 9-18-0647/CC-0006-18: Dockweiler State Beach
- 9-20-0275/CC-0002-20: Grover Beach
- 9-21-0165/CC-0004-21: Samoa Beach, Humboldt Co.



The proposed revised special condition and footnote set forth below would supersede and replace **Special Condition 6** approved by the Commission in CDP E-00-008 as it applies to the Zayo cable system. The proposed revisions are illustrated by strikethroughs for deletions and underline for additions. All other requirements, including all standard and special conditions, of the Commission's approval of CDP E-00-008-A1, A2, A3 and A4 would remain in full force and effect with respect to the amended project.

Special Condition:

6. **Cable Surveying.** ~~Every 18 to 24 months for the life of project,~~ After any event<sup>1</sup> that has the potential to affect the cables, the applicant shall survey the cable route from the mean high tide line to the seaward limit of the territorial water of the State of California to verify that the cables have remained buried consistent with the as-built cable burial plan required by Special Condition 5. The survey shall be conducted with a remotely operated vehicle ("ROV") equipped with video and still cameras and by a third 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 the cable is no longer buried consistent with the as-built cable burial plan required by Special Condition 5, the applicant shall within 30 days of survey completion, submit to the Executive Director for approval a plan to re-bury those cable segments.

Footnote:

1 "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 and shall schedule a survey at the soonest available opportunity, subject to vessel availability, weather conditions, and related operational conditions affecting the survey. Starting in 2021, 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.

## C. OTHER AGENCY APPROVALS

### California State Lands Commission (CSLC)

Zayo Group Holdings is currently in the process of transferring the CSLC submerged lands lease from X2 Telecommunications (application submitted August 23, 2021). The conditions of the CSLC lease currently require surveys to be completed every five years, and a modification of that condition, which has been requested, is necessary to be consistent with this amendment. Transfer is expected to be completed within 6 months of application. Commission staff conducted outreach to CLSC staff and no objection to the proposed permit amendment was raised at the time of this report.

## 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 marine mammals or fishing gear could become entangled in the cable. In CDP E-00-008, the Commission required [Special Condition 6](#) 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 fishing communities. In response to these concerns, several fiber optic cable companies agreed to survey the cable routes at least every two years. The Commission required [Special Condition 6](#) in its approval of CDP E-00-008 to memorialize and be consistent with the agreement reached between cable companies and fishing communities.

Since the cable was installed, a cable burial survey in 2020 was compared against the post-lay inspection survey. The survey results 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 fiber optic cables approved by the Commission that similarly show that the burial status of cables installed offshore of southern and central California has not changed significantly with time.

Based on this information, Zayo now proposes to eliminate the requirement to survey the cable every 18 to 24 months 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 6](#), which required periodic burial surveys of the subject cable, was included in CDP E-00-008 to reduce the potential for three types of impacts: 1) entanglement of whales with the cables during foraging at or near the seafloor; 2) snagging of bottom-contact fishing gear on a cable and resulting losses of gear and fishing time; and/or 3) snagging of abandoned fishing nets or other lost fishing gear on the cable that could then entangle and drown marine mammals or other marine wildlife. However, data from seafloor cable surveys indicate that the potential for these three types of impacts was avoided at least in part because the cable was buried in seafloor sediments during initial installation and has remained buried over the intervening years. Survey results indicate that once installed and buried in seafloor sediments, the cable has not moved or become exposed. In support of this conclusion, according to Zayo, there have been no claims of fishing gear entanglements or other similar impacts since the cable was installed. Similarly, the cable burial survey completed in August of 2020 did not find any indication of snagged fishing gear or entanglements. Members of the fishing committee also did not raise any concerns with this proposed amendment at the annual meeting with Zayo.

Additionally, the seafloor surveys themselves may contribute to adverse impacts to marine resources and fishing. Vessels used to support the surveys generate air emissions including criteria pollutants, carbon dioxide, and other greenhouse gases. During transit to and from project sites and during surveys, survey vessels also 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 interfere with fishing activities and force fishers to avoid the survey areas or remove traps along the survey route in advance of the surveys. At their annual meeting of the fisheries cable committee and the Zayo, no concerns were raised over the proposed amendment to the permit condition.

The Commission agrees with Zayo Group 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 taken 20 years after the original post-installation survey (not available when the cable was first approved) indicate that under normal offshore oceanic conditions, the subject 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 that has the potential to expose the cable. To address this concern, the amended [Special Condition 6](#) would require Zayo to conduct a survey after an event, such as an earthquake, tsunami, or gear snag, that has the potential to expose the cable. Further, Zayo would also be 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 would continue to be protected. The Commission therefore finds that the amended condition 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 CSLC, acting as lead CEQA agency, certified a Final Environmental Impact Report for the initial cable installation project on April 20, 2000 (State Clearinghouse Number 1999021067).

In CDP E-00-008 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 and address, namely, the uncovering of the cable. Further, such a reduction would 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-00-008-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:**

Padre Associates on behalf of Zayo Group Holdings, Inc. Application to amend Coastal Development Permit E-00-008 and modify Consistency Certification No. CC-110-00, on behalf of Zayo Holdings Inc., dated April 14, 2021.

Zayo Group Holdings, Inc. ROV Survey Report, Global West Cable Segments E, F, G Offshore Morro Bay, Santa Barbara, Manhattan Beach, and San Diego. October 2, 2020.

California Coastal Commission. Final Adopted Findings for CDP Application E-00-008 and Consistency Certification CC-111-00. November 16, 2000 (approved December 12, 2000).