

# Staff Report 43

## **LESSEE:**

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RTI Infrastructure, Inc.

## **PROPOSED ACTION:**

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Consider adoption of an Addendum to a Mitigated Negative Declaration (MND) and Amendment of Lease

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Pacific Ocean, Pismo State Beach, Grover Beach, San Luis Obispo County.

## **AUTHORIZED USE:**

Installation, use, and maintenance of one 2-inch-diameter subsea fiber optic cable and four 6-inch-diameter steel conduits.

## **TERM:**

25 years, beginning June 23, 2020.

## **CONSIDERATION:**

\$194,700 per year for four conduits and one subsea fiber optic cable; with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease.

## **PROPOSED AMENDMENT**

- Amend Section 1, Authorized Improvements and Land Use or Purpose to relocate the installation, use, and maintenance of two 6-inch-diameter steel conduits and one 2-inch-diameter subsea fiber optic cable.
- Amend Section 1, Consideration from \$194,700 per year to \$276,790 per year, effective June 23, 2022.
- Amend Section 1, Surety Bond or Other Security from \$200,000 to \$400,000.

- Amend Section 2, Special Provisions to include construction-related requirements.
- Replace Exhibit A, Land Description.
- Replace Exhibit B, Site and Location Map.

### **SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Contractor liability insurance in an amount no less than \$5,000,000 per occurrence.
- Within 60 days of completing the installation of authorized improvements, Lessee will provide Lessor with a set of "as-built" plans and a post-lay cable survey, including photos where feasible, that will show where the improvements have been placed. Lessor shall then replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein. Should Lessor's staff review of the as-built plans and survey identify a change in the improvements that necessitates a change in annual rent, Lessee agrees to submit an application, within 60-days' notice from Lessor's staff, to request a lease amendment to reflect such changes.

### **STAFF ANALYSIS AND RECOMMENDATION:**

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#### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

#### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On June 23, 2020, the Commission authorized a General Lease – Right-of-Way Use to the Lessee for the installation, use, and maintenance of one 2-inch-diameter subsea fiber optic cable and four 6-inch-diameter steel conduits ([Item 50, June 23, 2020](#)). That lease expires on June 22, 2045.

In November 2020, the Lessee completed installation of two 6-inch-diameter steel conduits and one subsea fiber optic cable (Bay-to-Bay cable to Singapore). The second steel conduit will remain vacant, pending potential future use. The two steel conduits previously authorized at this location will not be constructed to avoid

multiple cable crossings and sensitive hard bottom habitat that were identified after the Mitigated Negative Declaration (MND) was adopted and the lease authorized.

The Lessee is now requesting an amendment to the lease to relocate the installation, use, and maintenance of two 6-inch-diameter steel conduits and one 2-inch-diameter subsea fiber optic cable. The lease as amended would authorize a total of four steel conduits and two fiber optic cables. One already constructed steel conduit will remain vacant at the original lease location. The two to-be-constructed steel conduits and one additional subsea fiber optic cable will be located approximately 450 feet to the south-east of the previously authorized location. The Lessee may apply to amend the lease in the future to install additional subsea fiber-optic cables within the steel conduits at either location.

As with the already approved and built conduits, all conduits would be buried at a minimum depth of 35 to 50 feet below the beach and the seafloor and exit approximately 3,300 feet offshore. Construction is anticipated to begin in September 2022.

The proposed conduits and additional fiber optic cable will aid in providing faster and a larger amount of data transmissions between America, Asia, and Australia. New fiber optic cables are needed to keep up with technical advancements to transmit uninterrupted data. Worldwide connectivity with uninterrupted data transfer is essential to the global economy. Existing cable systems that were installed 15 to 20 years ago, with older technology, limit the amount of telecommunication data that can be transferred across the Pacific Ocean.

The lease is limited to a 25-year term and does not grant the Lessee exclusive rights to the lease premises. Upon termination of the lease, the Lessee may be required to remove any improvements and restore the lease premises to their original condition. Additionally, the Lessee will continue to maintain a performance bond, which has been increased to the amount of \$400,000, and to insure the lease premises and indemnify the State for any liability incurred as a result of the Lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of public land.

### **CLIMATE CHANGE:**

The climate change analysis in the Staff Report for the MND ([Item 50, June 23, 2020](#)) is also applicable to the revised Project. Detailed background information on the potential impacts of climate change and sea level rise on the Project was provided in Section 5.1 of the [RTI Infrastructure, Inc. Grover Beach Subsea Fiber Optic Cables Project MND](#).

Sea level rise as a function of global climate change is not expected to affect the Project because none of the permanent infrastructure is proposed in areas subject to flooding (greater than a 1 percent chance, annually) or increased erosion with anticipated sea level rise. The marine component of the Project would be buried approximately 3 feet beneath the ocean floor in State waters starting at 3,300 feet offshore. Therefore, the offshore Project components would not be impacted by sea level rise.

The subsea fiber optic cable between the cable landing site and where the steel conduits exit offshore would be drilled below the beach and thus would not be subject to increased erosion over time. The terrestrial fiber optic cable would not be subject to increased inland flooding since it would be installed by the horizontal directional drilling method going under a coastal creek (Meadow Creek) and beneath local streets in Grover Beach. Any local street flooding filling up the landing vaults holding the waterproof terrestrial fiber optic cables should not be damaging the cable any differently than other utilities beneath the local streets.

#### **TRIBAL COORDINATION AND CONSULTATION:**

Staff conducted outreach and government to government consultation as part of the original California Environmental Quality Act (CEQA) analysis process, and tribal monitors were onsite during ground-disturbing activities in November 2020.

Because of project revisions, staff undertook additional coordination and consultation. Staff received a response from the Native American Heritage Commission (NAHC) dated February 8, 2022, with an updated list of tribes to contact for the revised Project. Outreach letters were sent to those tribes on March 11, 2022, to coordinate with them to ensure they can provide meaningful input on the Project's potential effects on Tribal Cultural Resources and possible measures to avoid or minimize any significant effects. Tribal monitors will also be onsite for ground-disturbing activities of the revised Project.

#### **CONCLUSION:**

For all the reasons above, staff believes the issuance of the lease amendment will not substantially impair the public rights to navigation, fishing, and commerce, or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

## OTHER PERTINENT INFORMATION:

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1. Approval or denial of the application for a lease amendment and adoption of the Addendum is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as a trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Lessee may not construct additional conduits or the subsea fiber optic cable. Upon expiration or prior termination of the lease, the Lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and the "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Potential impacts to existing burden factors of diesel, traffic and PM 2.5 may be temporarily worsened during the construction activities. CalEnviroScreen 4.0 did not identify disadvantaged communities located in the vicinity of this project.
4. Pursuant to the Commission's delegation of authority and the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15025), Commission staff prepared an MND for the original project identified as the RTI Infrastructure, Inc. Grover Beach Subsea Fiber Optic Cables Project (April 2020), CSLC MND Number 803, State Clearinghouse Number 2020040309. The MND and Initial Study were prepared and circulated for public review pursuant to the provisions of CEQA and adopted by the Commission together with a Mitigation Monitoring Program ([Item 50, June 23, 2020](#)). In March 2022, staff prepared an Addendum to the MND for the revised Project and posted the [Addendum](#) on the Commission website with the MND. Based on substantial evidence and the evaluation contained in the Addendum, no new mitigation measures are required and none of the conditions described in CEQA Guidelines section 15162, subdivision (a), have occurred. The Mitigation Monitoring Program previously adopted remains in effect with the updated Mitigation Measure GHG-1 (Purchase GHG Carbon Offsets for Construction Emissions) in the Addendum, which the Lessee has agreed to adopt, replacing the original MM GHG-1.
5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq. At the time the Commission adopted the MND in 2020, staff concluded that such activity would not affect those significant lands and the Commission found the activity to be

consistent with its use classification pursuant to Public Resources Code section 6370 et seq.

## **APPROVALS REQUIRED:**

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City of Grover Beach  
California Department of Parks and Recreation  
U.S. Army Corps of Engineers  
Central Coast Regional Water Quality Control Board  
State Historic Preservation Office

## **EXHIBITS:**

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- A. Land Description
- B. Site and Location Map

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that the MND, CSLC MND No. 803 (April 2020), State Clearinghouse No. 2020040309, and the Mitigation Monitoring Program for this Project were adopted by the Commission on June 23, 2020 ([Item 50, June 23, 2020](#)), and that the Commission has reviewed and considered the information contained therein and in the [Addendum](#) prepared by staff in March 2022.

Find that in its independent judgment, the scope of activities to be carried out under the proposed modifications to the Project under this authorization have been adequately analyzed; and that none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impacts has occurred, and therefore, no additional CEQA analysis is required.

Adopt the [Addendum](#) to MND, CSLC MND No. 803 (April 2020), State Clearinghouse No. 2020040309.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed amendment of the lease will not substantially interfere with Public Trust needs and values at this location, at this time, and for the remaining term of the lease; and is in the best interests of the State.

**AUTHORIZATION:**

1. Authorize amendment of Lease Number 9632, a General Lease – Right-of-Way Use, effective April 26, 2022, to allow for the relocation of the installation, use, and maintenance of two 6-inch-diameter steel conduits and one 2-inch-diameter subsea-fiber optic cable, and amend Section 2, Special Provisions.
2. Amend Section 1, Consideration from \$194,700 per year to \$276,790 per year and bond or other security from \$200,000 to \$400,000, effective June 23, 2022.
3. Replace Exhibit A, Site and Location Map of the lease, with the attached Exhibit A, Site and Location Map (for reference purposes only) attached and by this reference made a part hereof.
4. Replace Exhibit B, Land Description of the lease, with the attached Exhibit B, Land Description, attached and by this reference made a part hereof.

## EXHIBIT A

LEASE 9632

### LAND DESCRIPTION

Four parcels of tide and submerged land lying in the bed of the Pacific Ocean, situated west of the City of Grover Beach, San Luis Obispo County, State of California and more particularly described as follows:

#### Parcel 1

Beginning at a point at the westerly terminus of the northerly line of Grand Avenue, also being a point on the Ordinary High Water of the Pacific Ocean, as described in the Corporation Grant Deed recorded as Document No. 34847 in Book 1644 at Page 126, Records of said County; Thence along said line of ordinary high water, North 14° 57' 21" West, 54.60 feet to the True Point of Beginning;

1. Thence South 87° 07' 26" West, a distance of 4225.06 feet to a point having a northing of 2241035.7910 and an easting of 5769178.9231;
2. Thence North 1° 52' 58" West, a distance of 303.92 feet to a point, having a northing of 2241339.5457 and an easting of 5769178.9384;
3. Thence South 89° 44' 06" East, a distance of 4210.47 feet to a point on said ordinary high water line as described in said deed, having a northing of 2241320.0650 and an easting of 5773389.3587;
4. Thence South 14° 57' 21" East along said ordinary high water line, a distance of 74.80 feet more or less to the True Point of Beginning, having a northing of 2241247.7982 and an easting of 5773408.6630.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

Coordinates are based upon State Plane Coordinates, California Coordinate System, Zone 5, NAD 83.



## Parcel 2

A 10 foot (3.048 meter) strip of submerged lands, being 5 feet (1.524 meters) on each side of the following described centerline:

Beginning at a point on a beach manhole having a Latitude  $35^{\circ} 07.3655'$  North and a Longitude  $120^{\circ} 37.9938'$  West; thence along said center line of the proposed pipe bore and cable the following four courses;

1. Thence in a Southwest direction to an angle point in said centerline, having a latitude of  $35^{\circ} 07.3012'$  N and a longitude of  $120^{\circ} 39.0210'$  W, a distance of  $1.565\pm$  kilometers;
2. Thence in a Southwest direction to an angle point in said centerline, having a latitude of  $35^{\circ} 07.2739'$  N and a longitude of  $120^{\circ} 39.6937'$  W, a distance of  $1.023\pm$  kilometers;
3. Thence in a Southwest direction to an angle point in said centerline, having a latitude of  $35^{\circ} 07.2504'$  N and a longitude of  $120^{\circ} 39.8163'$  W, a distance of  $0.191\pm$  kilometers;
4. Thence in a Southwest direction to an angle point in said centerline, having a latitude of  $35^{\circ} 06.4278'$  N and a longitude of  $120^{\circ} 44.1108'$  W, a distance of  $6.700\pm$  kilometers more or less.

The sidelines of said strip shall be lengthened or shortened as to begin at the ordinary high water mark of the Pacific Ocean and terminate at the State of California Offshore Boundary.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

ALSO EXCEPTING THEREFROM any portion lying within the above described Parcel 1.

### **Parcel 3**

Beginning at a point at the westerly terminus of the northerly line of Grand Avenue, also being a point on the Ordinary High Water of the Pacific Ocean, as described in the Corporation Grant Deed recorded as Document No. 34847 in Book 1644 at Page 126, Records of said County; Thence along said line of ordinary high water, South 14° 57' 21" East, 298.46 feet, South 17° 46' 11" West, 178.13 feet, South 13° 12' 09" East, 6.34 feet to the True Point of Beginning;

1. Thence South 13° 12' 09" East along said ordinary high water line, a distance of 322.77 feet to a point having a northing of 2240416.6628 and an easting of 5773520.5779;
2. Thence South 61° 07' 39" West, a distance of 3382.50 feet to a point having a northing of 2238783.3750 and an easting of 5770558.5341;
3. Thence North 17° 10' 52" West, a distance of 1007.43 feet to a point, having a northing of 2239745.8464 and an easting of 5770260.9464;
4. Thence North 72° 49' 08" East, a distance of 3334.72 feet to a point on said ordinary high water line more or less to the True Point of Beginning, having a northing of 2240730.9027 and an easting of 5773446.8598;

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

Coordinates are based upon State Plane Coordinates, California Coordinate System, Zone 5, NAD 83.

#### Parcel 4

A 10 foot (3.048 meter) strip of submerged lands, being 5 feet (1.524 meters) on each side of the following described centerline:

Beginning at a point on a beach manhole having a Latitude 35° 07.3347' North and a Longitude 120° 37.9197' West; thence along said center line of the proposed pipe bore and cable the following four courses;

1. Thence in a Southwest direction to an angle point in said centerline, having a latitude of 35° 07.0905' N and a longitude of 120° 38.7983' W, a distance of 1.409± kilometers;
2. Thence in a Southwest direction to an angle point in said centerline, having a latitude of 35° 06.6793' N and a longitude of 120° 39.7722' W, a distance of 1.663± kilometers;
3. Thence in a Southwest direction to an angle point in said centerline, having a latitude of 35° 06.0466' N and a longitude of 120° 42.2825' W, a distance of 3.990± kilometers more or less.

The sidelines of said strip shall be lengthened or shortened as to begin at the ordinary high water mark of the Pacific Ocean and terminate at the State of California Offshore Boundary.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

ALSO EXCEPTING THEREFROM any portion lying within the above described Parcel 3.

The geographic coordinates stated herein were provided by the applicant or produced from drawings provided by the applicant and are subject to change pending as-built locations. Coordinates are based upon WGS84 Datum.

#### END OF DESCRIPTION

New coordinates are to be collected and verified by the lessee at time of placement of the proposed facilities, and the coordinates herein edited accordingly. This description is to be updated once final as-built plans are submitted.



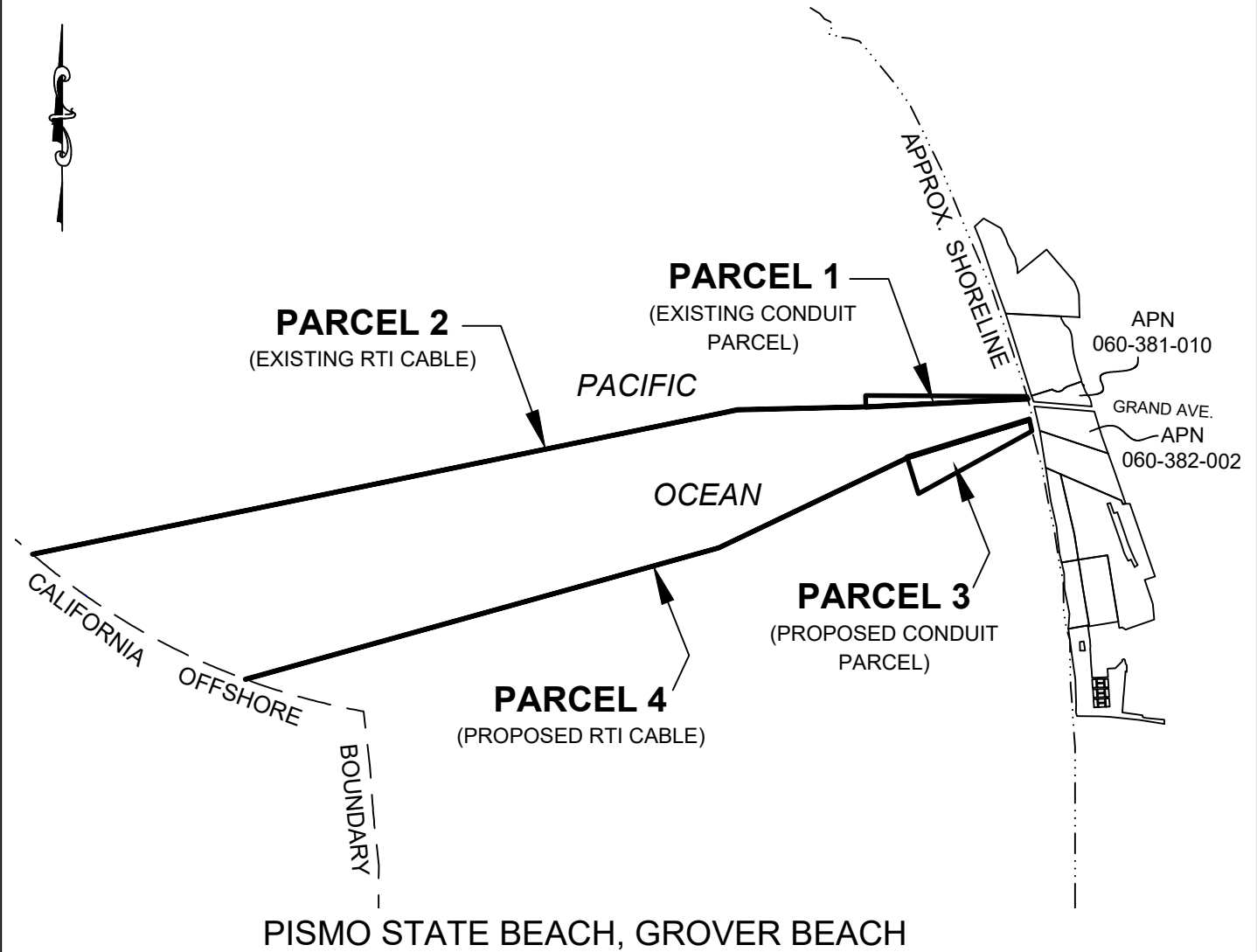
David A. Marchell, California PLS 6375

3/8/2022  
Date



NO SCALE

## SITE



NO SCALE

## LOCATION



MAP SOURCE: USGS QUAD

THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

## Exhibit B

LEASE 9632  
RTI INFRASTRUCTURE, INC.  
APNs 060-381-010 &  
060-382-002  
GENERAL LEASE -  
RIGHT-OF-WAY USE  
SAN LUIS OBISPO COUNTY



TS 03/08/2022