

# Staff Report 61

**LESSEE/APPLICANT:**

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AT&T Corp.

**PROPOSED ACTION:**

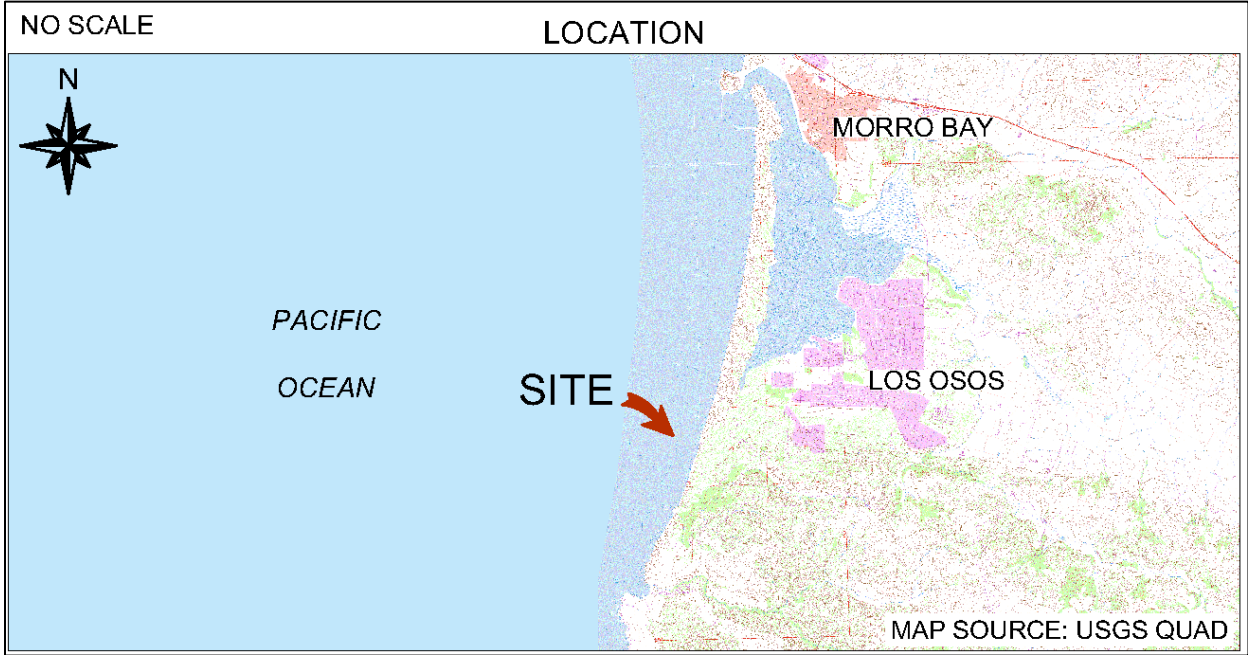
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Termination of a General Lease – Non-Exclusive Right-of-Way Lease and Issuance of a General Lease – Right-of-Way Use.

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

Sovereign tide and submerged land in the Pacific Ocean, offshore of Morro Bay, San Luis Obispo County (as shown in Figure 1).

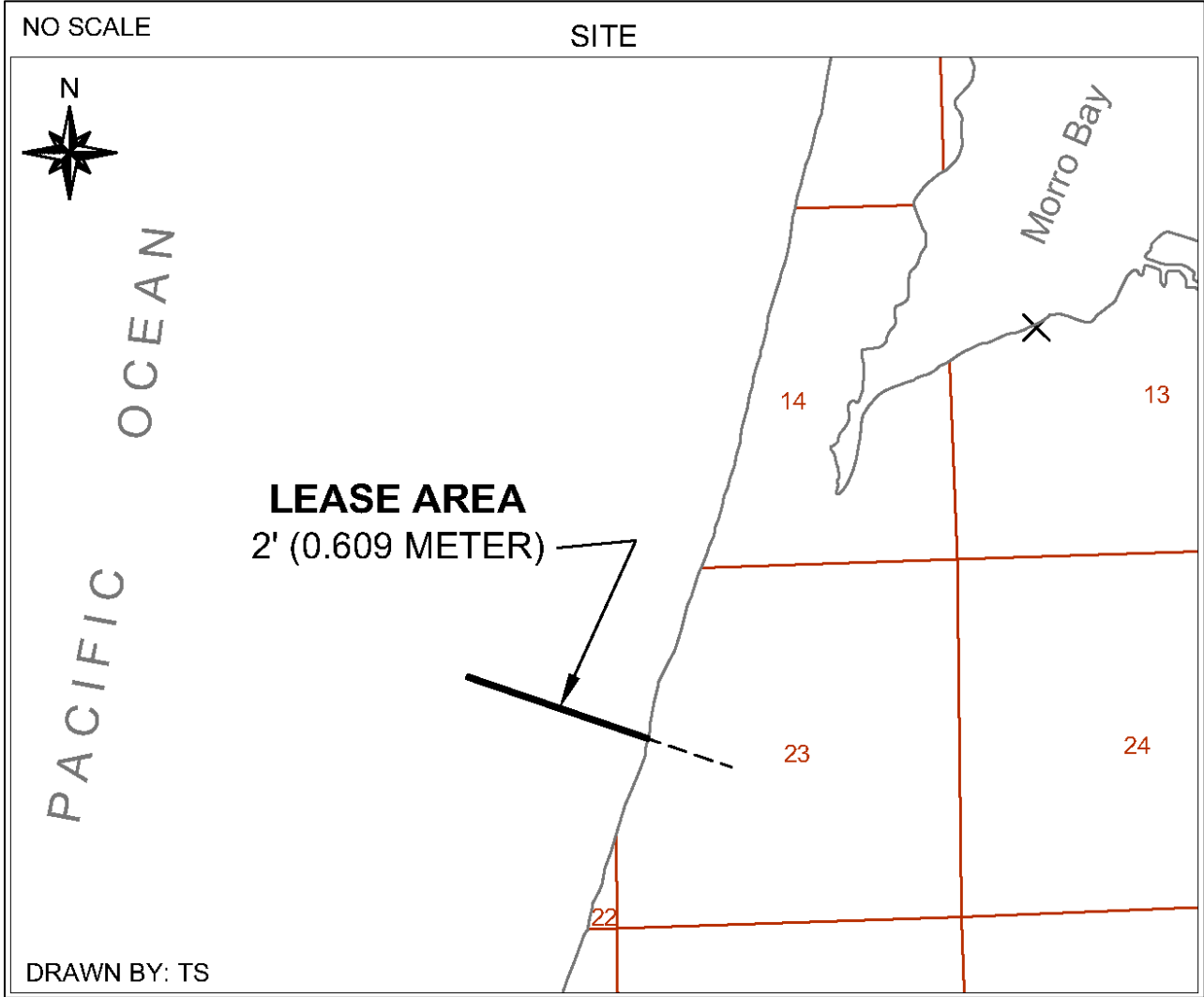
**Figure 1. Location**



**AUTHORIZED USE:**

Maintenance of one existing non-operational 5-inch-diameter steel conduit and a 1.25-inch-diameter fiber optic cable segment (as shown in Figure 2).

**Figure 2. Site Map**



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

25 years; beginning April 20, 2024.

**CONSIDERATION:**

\$14,220 per year, 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. Applicant may elect to pay rent for the entire 25-year term in the amount of \$355,500 at the time the first-year rental payment is due, within 60 days of April 20, 2024. Lessee's option to pay the entire amount of rent is not valid for subsequent years.

**SPECIFIC LEASE PROVISIONS:**

- Any future use or modification to the improvements will require prior Commission review and approval.
- Liability insurance in an amount no less than \$1,000,000 per occurrence, or equivalent staff-approved self-insurance program.
- Bond or other surety in the amount of \$500,000.

**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 October 29, 2010, the Commission authorized a General Lease – Non-Exclusive Right-of-Way Use to AT&T Corp. for use of one 3.75-inch-diameter steel conduit and one 1.25-inch fiber-optic cable ([Item 49, October 29, 2010](#)). On June 28, 2016, the Commission authorized a revision of rent ([Item 56, June 28, 2016](#)). On November 29, 2017, the Commission authorized an amendment of lease to authorize the removal of the China-U.S. segment S7 fiber optic cable ([Item 55, November 29, 2017](#)). The amendment authorized the conduit to remain in place but required the Lessee to submit a site restoration plan for staff review and approval for removal of the conduit no later than April 20, 2021, or to submit an application for the conduit's use should it's continued use be deemed feasible. On February 28, 2020 and April 27, 2021, the Executive Officer authorized the continuation of rent ([Executive Officer's Report, February 28, 2020](#), [Executive Officer's Report, April 27, 2021](#)). The lease will expire on April 19, 2025.

On November 15, 2019, the Lessee completed the cable removal and submitted a Project Completion and Environmental Compliance Summary Report to the Commission. The Applicant proposes to leave the conduit and segment of the cable within the conduit in place. A cable stopper and a floating recovery rigging were connected to the end of a 2-inch cable segment extending out from the conduit. The cable stopper protects the exposed inner layers of the cut cable from corrosion. The floating recovery rigging will allow the end of the cable to be retrieved during any future removal or reuse projects.

On April 1, 2021, Staff received a letter on behalf of the Lessee stating that AT&T had not identified a continued, active use for the conduit. The letter also advised that based on a third-party study and after exploring potential solutions, conduit removal would cause significant environmental disturbance. The study determined removing the conduit could significantly negatively impact air quality, marine and terrestrial biological resources, cultural resources, recreational activities, commercial and recreational fishing, geology and soils, and water quality due to excavation and other removal activities. It was also determined that keeping the steel conduit in place would not significantly harm the environment.

The cable was part of the China-U.S. Cable Network owned by a consortium of which AT&T is a member. The consortium is dissolving, and AT&T is now applying to terminate the existing lease and to issue a new General Lease – Right-of-Way Use for the existing conduit containing the remaining segment of the S7 fiber-optic cable; with an option to pay the rent for the entire term of the lease upfront. If the proposed lease is authorized, the lease and costs associated with the lease will be included in the consortium's dissolution agreement. An application to assign or amend the lease will be required if ownership of the conduit is transferred or if a future use of the conduit is identified.

The current lease identifies a 3.75-inch-diameter conduit; however, the Applicant reported the inner diameter of the conduit is 3.75-inches, and the outer diameter is 5-inches. Staff recommends the Commission terminate the current General Lease – Non-Exclusive Right-of-Way Use, effective April 19, 2024. Staff further recommends a General Lease – Right-of-Way Use for the existing 5-inch-diameter steel conduit begin on April 20, 2024 to align with the current lease anniversary date.

The conduit is buried below the ocean floor within State waters and exits approximately 0.5 nautical miles offshore in 43 feet of water. This configuration does not impede surface use or interfere with Public Trust needs and values at this location, at this time, and for the term of the proposed lease. The proposed facilities

do not significantly alter the land, and the lease does not alienate the State's sovereign interest, or permanently impact public rights.

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 proposed lease requires the lessee to maintain a surety bond in the amount of \$500,000 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 the public land involved.

**CLIMATE CHANGE:**

Climate change impacts, including sea level rise, more frequent and intense storm events, increased flooding and erosion, and changes in sediment deposition affect open coastal areas in California. The lease area is located in the Pacific Ocean and the Santa Barbara Channel in tidally influenced sites offshore of Montaña de Oro State Park in San Luis Obispo County.

The California Ocean Protection Council updated the *State of California Sea-Level Rise Guidance* in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Port San Luis tide gauge was used for the projected sea level rise scenario for the lease area as listed in Table 1.

**Table 1. Projected Sea Level Rise for Port San Luis**

Year	Projection (feet)
2030	0.7
2040	1.2
2050	1.8
2100	6.7

Source: Table 19, [State of California Sea-Level Rise Guidance: 2018 Update](#)

Note: Projections are with respect to a 1991 to 2009 baseline.

As stated in [Safeguarding California Plan: 2018 Update](#) (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea level rise). The combination of these conditions will likely

result in increased wave run up, storm surge, and flooding in coastal areas. Climate change and sea level rise will further influence coastal areas by changing erosion and sedimentation rates as beaches and coastal landscapes are exposed to increased wave force.

The conduit is buried under the ocean bed. The conduit, and the fiber optic cable within it, remains buried from the parking lot to offshore with a maximum burial depth of 140 feet below the ground surface/ocean bed. A small portion of the fiber optic cable, where it was cut, remains offshore outside of the conduit where it is buried approximately 3 feet under the floor of the Pacific Ocean. Due to the depth of burial, the conduit and the fiber optic cable are not expected to be impacted by climate change events.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are in an area that may be subject to the effects of climate change, including sea level rise.

**CONCLUSION:**

For all the reasons above, staff believes the issuance of the proposed lease 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 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 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 trustee of the State's Public Trust lands as authorized by law. The lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leveraging Technology" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. AT&T also removed fiber optic cable segment E1 authorized under Lease No. PRC 8278. An application to terminate that lease and to issue a new General Lease – Right-of-Way Use is also on the February 26, 2024 Commission meeting agenda.

4. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

5. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

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

Find that the proposed lease will not substantially impair the public rights to navigation, fishing, and commerce or substantially interfere with Public Trust needs and values at this location, at this time and for the term of the lease; and is in the best interests of the State.

### **AUTHORIZATION:**

1. Authorize termination of Lease Number PRC 8154.1, a General Lease – Non-Exclusive Right-of-Way Use issued to AT&T Corp., effective April 19, 2024.
2. Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning April 20, 2024, for a term of 25 years, for one existing non-operational 5-inch-diameter steel conduit with a 1.25-inch-diameter fiber optic cable

segment; annual rent in the amount of \$14,220 with an annual Consumer Price Index adjustment, and with the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease; or one option to pay rent for the entire 25-year term of the lease in the amount of \$355,500, to be exercised at the time the first year rental payment is due, within 60 days of April 20, 2024; liability insurance in an amount no less than \$1,000,000 per occurrence; and a surety bond in the amount of \$500,000.