

Staff Report 68

APPLICANT/SUBLESSOR:

Middle Mile Infrastructure, LLC

SUBLESSEES:

RTI Infrastructure, Inc.

Seren Juno Network America, Inc.

PROPOSED ACTION:

Issuance of a General Lease – Right-of-Way Use and Endorsement of Two Subleases.

AREA, LAND TYPE, AND LOCATION:

Sovereign tide and submerged land in the Pacific Ocean, near Pismo State Beach, Grover Beach, San Luis Obispo County (as shown in Figure 1).

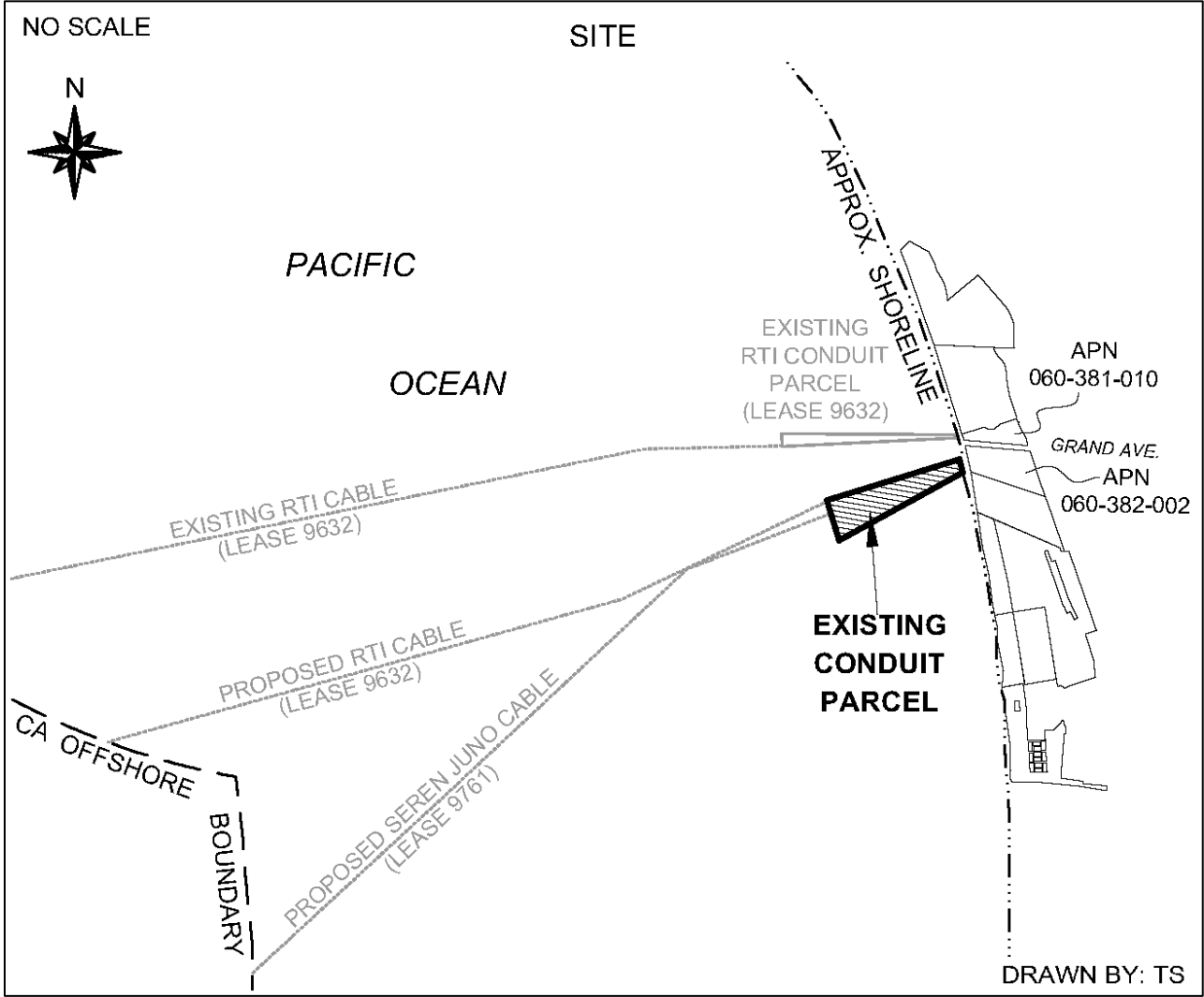
Figure 1. Location



AUTHORIZED USE:

Use of two existing 6-inch-diameter steel conduits and one proposed fiber optic cable within each conduit (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:

24 years, 7 months, 23 days; beginning February 26, 2024.

CONSIDERATION:

\$33,320 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.

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 \$100,000.

STAFF ANALYSIS AND RECOMMENDATION:

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:

Middle Mile Infrastructure, LLC (Applicant), a subsidiary of Meta Platforms, Inc., is applying for a General Lease – Right-of-Way Use for the use of two existing 6-inch-diameter steel conduits (Conduits) in the Pacific Ocean, near Pismo State Beach, Grover Beach, San Luis Obispo County. The Applicant intends to assume ownership of the Conduits from RTI Infrastructure, Inc. (RTI) upon authorization and execution of the proposed lease. The Conduits are currently authorized under Parcel 3 of Lease 9632 to RTI. RTI applied for acceptance of a partial lease quitclaim deed and amendment of Lease 9632 to remove the Conduits from Lease 9632 and to make other amendments. That application is also on the Commission's February 26, 2024 agenda.

The Applicant is also seeking authorization for two sublease endorsements for:

1. A 2-inch-diameter buried fiber optic cable proposed by RTI that would occupy the existing conduit designated as landing pipe 3. RTI's proposed cable, designated as the “Bifrost Cable”, was previously authorized by the Commission under Lease 9632 as amended ([Item 43, April 26, 2022](#)).

2. A 2-inch-diameter buried fiber optic cable proposed by Seren Juno Network America, Inc. (Seren Juno) that would occupy the existing conduit designated as landing pipe 4. Seren Juno's proposed cable, designated as the "Juno Cable" was previously authorized by the Commission under Lease 9761 ([Item 45, October 19, 2023](#)). Lease 9761 authorizes the portion of the cable outside of landing pipe 4. This endorsement of sublease will also authorize Seren Juno to install the portion of the Juno Cable within landing pipe 4.

Both proposed fiber optic cables are currently scheduled to be installed in Spring 2024. Staff recommends the term of this proposed lease align with the expiration dates of the previously authorized fiber optic cable leases described above. Staff recommends proration of the annual rent due for the last year of the lease, from February 26, 2048 through October 18, 2048.

The Conduits are buried below the ocean floor within State waters and do 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. This proposed lease does not authorize any new construction. 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 24-year, 7-month, 23-day 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 performance bond in the amount of \$100,000 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:

Sea level rise as a function of global climate change is not expected to affect the Project because none of the components would be located in areas subject to flooding (greater than a 1 percent chance, annually), increased erosion with anticipated sea level rise, or scour effects and exposure from increased storm frequency and severity. The existing conduits are at a depth of approximately 35 to 50 feet under the beach and would not be subject to increased erosion over time.

CONCLUSION:

For all the reasons above, staff believes the issuance of the 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:

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.
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. **Endorsement of Sublease:** Endorsement of the subleases 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).

4. **Existing Conduits:** 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.

5. **Proposed Cable Segment Installation Within Landing Pipe 4:** Pursuant to CEQA, staff prepared an MND identified as California State Lands Commission MND No. 803, State Clearinghouse No. 2020040309, and a Mitigation Monitoring Program (MMP) that were adopted by the Commission on June 23, 2020 ([Item 50, June 23, 2020](#)). On April 26, 2022, the Commission adopted an Addendum to the MND ([Item 43, April 26, 2022](#)). The proposed cable segment within landing pipe 4 is a

portion of one of the six cables analyzed in the MND and Addendum to the MND.

6. 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.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Conduits: 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).

Proposed Cable Installation: Find that the MND, California State Lands Commission MND No. 803, State Clearinghouse No. 2020040309, and an MMP were adopted by the Commission on June 23, 2020 ([Item 50, June 23, 2020](#)).

Find that an Addendum to the MND was adopted by the Commission on April 26, 2022 ([Item 43, April 26, 2022](#)), pursuant to the provisions of CEQA.

Find that the Commission reviewed and considered the information contained in the previously adopted MND and Addendum; and that in the Commission's independent judgment, the scope of activities to be carried out under this authorization has been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 has resulted in any new or substantially more severe significant impacts; and, therefore, no additional CEQA analysis is required.

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.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning February 26, 2024, for a term of 24 years, 7 months, and 23 days, for two existing 6-inch-diameter steel conduits, each proposed to contain one fiber optic cable; annual rent in the amount of \$33,320 with an annual Consumer Price Index adjustment with the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease; liability insurance in an amount no less than \$1,000,000 per occurrence; and a surety bond or other security in the amount of \$100,000.
2. Authorize the endorsement of a sublease between the Applicant and RTI Infrastructure, Inc., effective on or after the beginning date of the proposed lease, for a portion of said lease, for a proposed fiber optic cable authorized under Lease 9632 to occupy the Applicant's conduit known as landing pipe 3.
3. Authorize the endorsement of a sublease between the Applicant and Seren Juno Network America, Inc., effective on or after the beginning date of the proposed lease, for a portion of said lease, for a proposed fiber optic cable authorized under Lease 9761 to occupy the Applicant's conduit known as landing pipe 4.
4. Authorize proration of the annual rent due for the period of February 26, 2048 through October 18, 2048.