

# Staff Report 75

**LESSEE:**

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RTI Infrastructure, Inc.

**PROPOSED ACTION:**

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Acceptance of a Partial Lease Quitclaim Deed and Amendment of Lease.

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

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

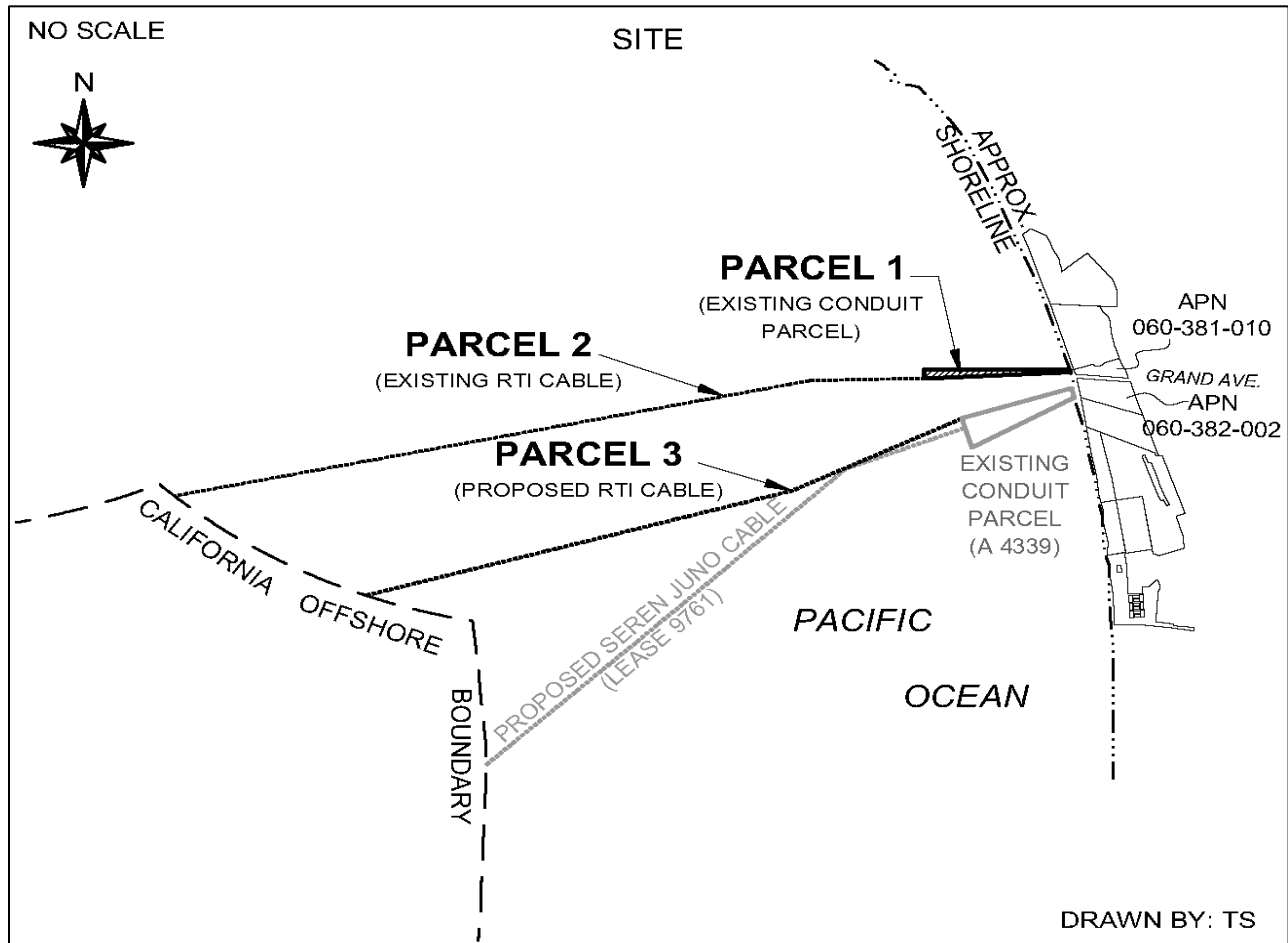
Figure 1. Location



**AUTHORIZED USE:**

Installation, use, and maintenance of two 2-inch-diameter subsea fiber optic cables and four 6-inch-diameter steel conduits (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 June 23, 2020.

**CONSIDERATION:**

\$276,790 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.

**PROPOSED AMENDMENT:**

**SECTION 1, BASIC PROVISIONS:**

1. LOCATION: replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only).
2. TERM: extended to October 18, 2048.
3. LAND USE OR PURPOSE and AUTHORIZED IMPROVEMENTS: amended to reflect the use of two existing 6-inch-diameter steel conduits and one existing 2-inch-diameter subsea fiber optic cable; and installation and use of one 2-inch-diameter subsea fiber optic cable.
4. CONSIDERATION: revise the base annual rent from \$276,790 to \$234,900.
5. SURETY BOND OR OTHER SECURITY: revise from \$400,000 to \$300,000.

**SECTION 2, SPECIAL PROVISIONS:**

6. Replace the cable burial verification inspection schedule to occur on or before the fifth anniversary of the cable installation date and upon the occurrence of events that indicate the cable may have become unburied.
7. Add : The Executive Officer or designee is authorized to accept a partial lease quitclaim deed for Lease Parcel 3 as described in the First Amendment of Lease No. 9632, effective April 26, 2022 upon satisfactory evidence of the transfer of ownership of two existing conduits, known as landing pipes 3 and 4, to Middle Mile Infrastructure, LLC and Lessor's authorization and execution of a new lease for said conduits to Middle Mile Infrastructure, LLC.

All other terms and conditions of the lease shall remain in effect without amendment.

**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 the adoption of a Mitigated Negative Declaration (MND), State Clearinghouse No. 2020040309, adoption of a Mitigation Monitoring Program (MMP) and issuance of a General Lease – Right-of-Way Use for the installation and use of four steel conduits and one fiber optic cable near Grover Beach, San Luis Obispo County ([Item 50, June 23, 2020](#)). On April 26, 2022, the Commission authorized the adoption of an Addendum to the MND and amendment of the lease to relocate the installation site of the fiber optic cable and two of the previously authorized steel conduits; and for authorization to lay one additional fiber optic cable, known as the Bifrost Cable ([Item 43, April 26, 2022](#)). The lease will expire on June 22, 2045.

The Lessee completed installation of the relocated conduits, known as landing pipes 3 and 4, on Parcel 3 of the Lease (Conduits) in 2022 and now intends to transfer ownership of the Conduits to Middle Mile Infrastructure, LLC (MMI). The Lessee applied to the Commission for acceptance of a partial lease quitclaim deed for the Conduits and an amendment of the lease. The Lessee will retain two of the existing conduits, known as landing pipes 1 and 2 (Lease Parcel 1) and the Bay to Bay Express (BtoBE)/Cap-1 Cable occupying landing pipe 2 (Lease Parcel 2). The Lessee may apply to amend the Lease in the future to install an additional subsea fiber optic cable in the vacant landing pipe 1.

In a separate action to also be considered on this February 26, 2024 Commission agenda, MMI applied for a General Lease – Right-of-Way Use for the existing Conduits and endorsements of two subleases: one to the Lessee for the proposed Bifrost Cable to occupy landing pipe 3 (as authorized by the Commission on April 26, 2022 ([Item 43, April 26, 2022](#)), and the other to Seren Juno Network America, Inc. for its proposed JUNO Cable, authorized under Lease 9761, to occupy landing pipe 4 ([Item 45, October 19, 2023](#)). The Lessee is also requesting that the Commission extend the lease term to align with the expiration dates of Lease 9761 and the proposed MMI lease. Staff recommends proration of the annual rent due for the last year of the lease, for the period of June 23, 2048 through October 18, 2048, since it will not be a full year.

The Lessee is in compliance with the provisions of the lease, has received a right-of-entry permit from the California Department of Parks and Recreation to use the adjacent upland parcels, and has entered into an agreement with the [Central California Joint Cable/Fisheries Liaison Committee](#) for the Bay to Bay Express (BtoBE)/Cap-1 and Bifrost Cables. The Lessee will retain full liability for the Conduits

until the Commission has executed a lease to MMI and the Lessee has transferred ownership of the Conduits to MMI. Through the proposed new lease to MMI, MMI will accept all responsibility for the infrastructure, including end-of-life remediation.

The proposed acceptance of a partial lease quitclaim deed and amendment of the Lease would not substantially impair surface use or interfere with Public Trust needs and values at this location, at this time, and for the remaining term of the Lease. The proposed authorization does not allow any new or additional infrastructure than previously authorized. The Lease is limited to a 28-year, 3-month, and 26-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 Lease requires the Lessee to maintain a performance bond in the amount of \$300,000 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:**

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 and storms (especially when coupled with sea level rise). Stronger and more frequent storms would not impact the existing conduits that were installed by horizontal directional drilling approximately 35 to 50 feet below the ground surface/ocean bed, but could potentially expose or unbury the existing and planned fiber optic cables located 3 feet under the floor of the Pacific Ocean. Stronger storms could also expose the already existing and proposed ocean ground beds buried at least 6 feet below the surface of the beach (outside of Commission's jurisdiction).

Periodic monitoring, particularly following strong storms or tidal events that could scour the lease area and expose the leased facilities (as referenced in the lease amendment), may reduce the likelihood of severe structural degradation or dislodgement.

#### **CONCLUSION:**

For all the reasons above, staff believes acceptance of the partial lease quitclaim deed and amendment of the lease will not result in significant changes in the use of, or impacts to, Public Trust resources; will not substantially interfere with the Public

Trust needs and values at this location, at this time, or for the remaining 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. Acceptance of a Partial Lease Quitclaim Deed and Amendment of the lease are not projects as defined by the California Environmental Quality Act because they are administrative actions 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).

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

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

Find that acceptance of the partial lease quitclaim deed and the proposed lease amendment 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 the Executive Officer or designee to accept a partial lease quitclaim deed for Parcel 3 of Lease 9632 upon satisfactory evidence of the transfer of ownership of two existing conduits, known as landing pipes 3 and 4, to Middle Mile Infrastructure, LLC and the authorization and execution of a Commission lease for the Conduits to Middle Mile Infrastructure, LLC.
2. Upon acceptance of the partial lease quitclaim deed described in item 1 above, authorize the amendment of Lease 9632, a General Lease – Right-of-Way Use.
3. Authorize the annual rent due for the period of June 23, 2048 through October 18, 2048 to be prorated.