

Staff Report 19

APPLICANT:

Vero Fiber Networks, LLC

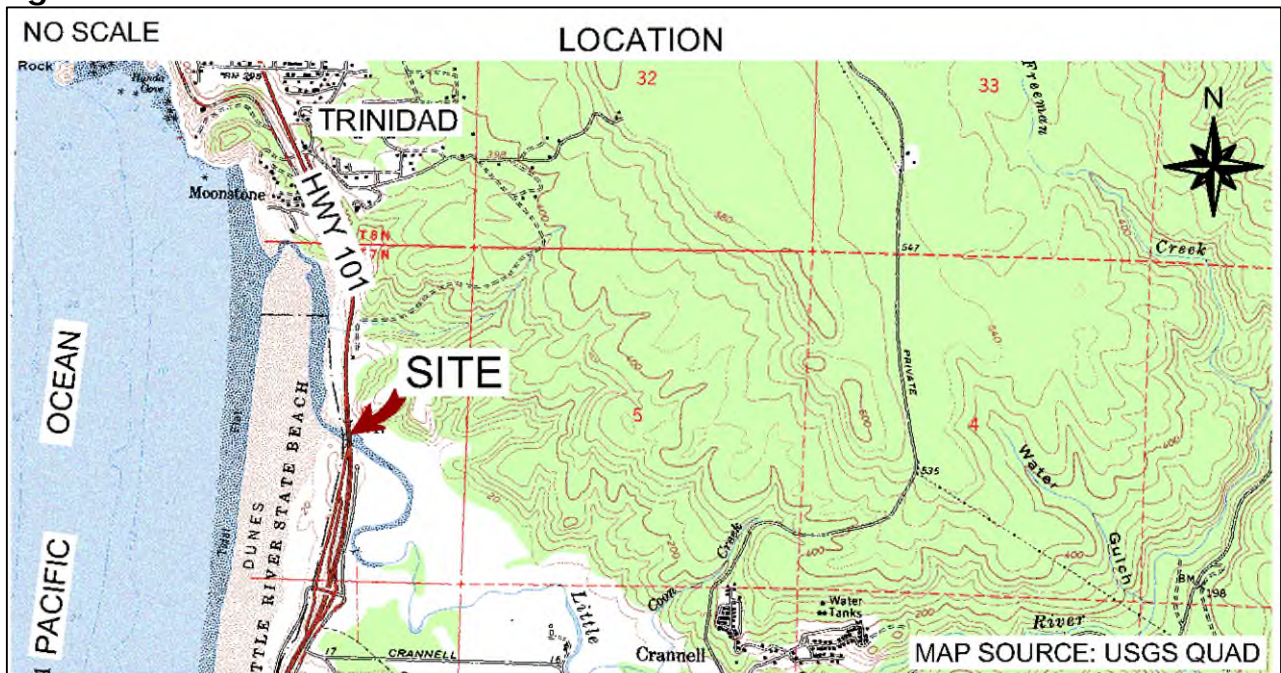
PROPOSED ACTION:

Issuance of a General Lease – Right-of-Way Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Little River, at the Highway 101 Bridge crossing, near Trinidad, Humboldt County (as shown in Figure 1).

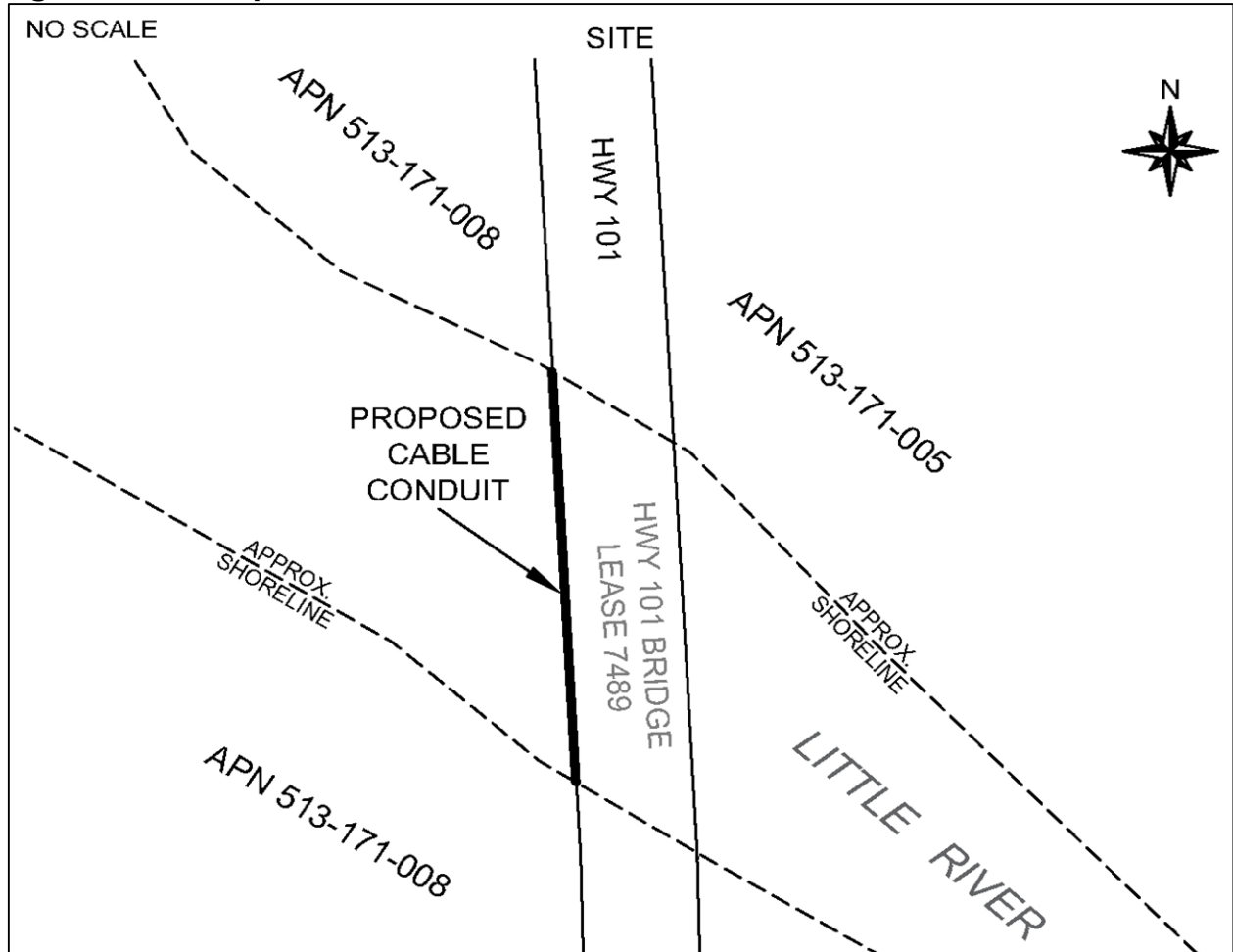
Figure 1. Location



AUTHORIZED USE:

Installation and use of a 4-inch-diameter fiber optic steel conduit with fiber optic lines (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 2, 2025.

CONSIDERATION:

\$1,750 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:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Bond or other surety in the amount of \$50,000.
- Lessee shall not start construction within the Lease Premises until Lessee obtains a Notice to Proceed from Lessor.
- Lessee shall reimburse any and all reasonable expenses incurred by Lessor or its staff in managing the Lease. This does not create an obligation for Lessor to perform any specific work or provide any specific services. Lessor assumes no liability for the work contemplated.
- Within 60 days of project completion with the Lease Premises, Lessee shall provide post-construction project verification including: a set of "as-built" construction plans certified by a California registered Civil/Structural Engineer and a post-construction written narrative report confirming completion of the project.

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:

The Applicant has applied to install a 4-inch-diameter fiber optic steel conduit with fiber optic lines over the Little River, at the Highway 101 Bridge crossing, near Trinidad, Humboldt County. This request pertains to the Digital 299 Fiber Optic Broadband Project (Project) for a telecommunications network along State Route 299 and surrounding areas. The Project will cross the Little River at Highway 101 in Humboldt County which is within the Commission's jurisdiction. The Project would provide internet and mobile data coverage to underserved communities in this part of Northern California. The Applicant is proposing attachment of the conduit to an existing bridge owned and operated by the California Department of Transportation (Caltrans). The conduit would be attached to the underside of the eastern end of the bridge to house the fiber optic lines. A two-person lift extending from the roadway will be utilized for placement of the conduit. Strapping hardware would be installed on the bridge to hold the conduit in place. The conduit would

continue underground on each side of the bridge along the roadway and within road shoulders. The entry and exit points of the conduit on the upland are located outside of the Commission’s jurisdiction.

The conduit would take up a relatively small space on the underside of the bridge crossing over the river and would not impact either the navigability or the recreational use of the river. The proposed lease does not alienate the State’s fee simple interest or permanently impair public rights. In addition, the lease has a limited 25-year term and does not grant the lessee exclusive rights to the lease premises.

The proposed lease requires the lessee 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:

Climate change impacts, including sea level rise, increased wave activity, storm events, and flooding may impact the use of a fiber optic steel conduit bridge attachment, subject to the proposed lease, on the US Highway 101 bridge over Little River. Little River is tidally influenced, and the mouth of the river is located at Little River State Beach that is in close proximity to the Project area.

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 North Spit 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 North Spit

Year	Projection (feet)
2030	1.0
2040	1.6
2050	2.3
2100	7.6

Source: Table 28, [State of California Sea-Level Rise Guidance: 2018 Update](#)

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

As stated in the [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 and near coastal areas. In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Climate change and sea level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Beaches, coastal landscapes, and near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater beach or bank erosion than previously experienced.

This increase in sea level combined with more frequent and stronger storm events will likely expose the lease area to higher flood risks, comprised of greater total water levels for longer periods of time. Due to these potential changes, the bridge to which the fiber optic steel conduit would be attached could need reinforcement in the future to withstand higher levels of flood exposure, more frequent or intensified scouring, and more frequent storm events. In addition, the bridge is not adaptable to variable water levels and may require more frequent maintenance to ensure continued function during and after storm seasons or to avoid dislodgement of the attached conduit. Any future activities involving the conduit on State land would require a separate authorization from the Commission.

Regular maintenance, as referenced in the lease, may reduce the likelihood of dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change, including sea level rise.

CONCLUSION:

For all the reasons stated 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, as this time, and for the term of the proposed 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. If the Commission denies this request, the Applicant cannot install the proposed fiber optic conduit. The lessee has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with the "Leveraging Technology," "Meeting Evolving Public Trust Needs," and "Leading Climate Activism" Strategic Focus Areas of the [Commission's 2021 - 2025 Strategic Plan](#).
3. The proposed lease includes a lease maintenance agreement to cover staff costs to comply with the lease terms.
4. The purpose of the California Environmental Quality Act (CEQA) is to "avoid or minimize environmental damage where feasible." (CEQA Guidelines section 15021)

A Mitigated Negative Declaration (MND), State Clearinghouse No. 2022010017, and a Mitigation Monitoring, Compliance, and Reporting Program (MMCRP) were prepared by the California Public Utilities Commission (CPUC) and adopted on December 15, 2022, for this project. Staff reviewed these documents and determined that the MND adequately analyzes and mitigates all potentially significant adverse environmental impacts that fall within the Commission's jurisdiction.

Pursuant to State CEQA Guidelines sections 15096, subdivision (g)(1), and 15097, subdivision (a), and in conjunction with approval of this Project, staff recommends that the Commission adopts the [CPUC's MMCRP \(provided for reference, as linked, Appendix C\)](#) for the portion(s) of the Project located on State lands, and delegates reporting and monitoring responsibilities to CPUC, as the CEQA lead agency, per CEQA Guidelines section 15097. CPUC will remain responsible for enforcing the MMCRP, unless otherwise delegated by such agency or until the Project is completed per CEQA Guidelines section 15097.

APPROVALS REQUIRED:

- U.S. Army Corps of Engineers
- California Public Utilities Commission
- California Department of Transportation
- California Department of Fish and Wildlife

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that a Mitigated Negative Declaration, State Clearinghouse No. 2022010017, and a Mitigation Monitoring, Compliance, and Reporting Program (MMCRP) were prepared by the California Public Utilities Commission and adopted on December 15, 2022, for the Project, and that the Commission has reviewed and considered the information contained therein; that in the Commission's independent judgment, the scope of activities to be carried out under the lease to be issued by this authorization have been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or the State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impact has occurred; and, therefore no additional CEQA analysis is required.

Adopt the MMCRP, as referenced by name.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that 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.

AUTHORIZATION:

Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning April 2, 2025, for a term of 25 years, for the installation and use of a 4-inch-diameter fiber optic steel conduit with fiber optic lines; annual rent in the amount of \$1,750 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; a bond or other surety in an amount of \$50,000; and liability insurance in an amount no less than \$1,000,000 per occurrence.