

Construction Permit

Moss Landing Harbor District

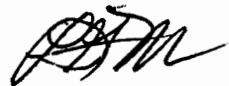
The Moss Landing Harbor District, a political subdivision of the State of California, hereby authorizes and permits the Monterey Bay Aquarium Research Institute (MBARI), herein referred to as Permittee, to undertake the following construction activity within the territorial boundaries and jurisdiction of the Moss Landing Harbor District.

Installation and operation of a portion of an undersea cabled observatory (the "Project"), known as "The Monterey Accelerated Research System" ("MARS"). The Project consists of a submarine cable extending 31.7 miles oceanward from the shore station in Moss Landing to an offshore submerged formation known as Smooth Ridge, in Monterey Bay. A scientific node would be located at the end of the cable, containing eight separate science ports to accommodate a variety of oceanographic research instruments. The cable will be buried along approximately 76% of the route, (The portion to be located on seabed within the District's territorial boundaries will be completely buried to a depth of approximately 50 feet), to a depth of 3.3 feet, where feasible, using a hydraulically-operated plow that is towed by a cable laying installation vessel. The plow would cut a narrow trench for the cable and bury the same. Onshore installation of cable will be achieved through the use of "horizontal directional drilling" ("HDD"). Once the cable has been installed, it will be connected to an existing fiber optic line on MBARI owned property.

This Construction Permit is for that portion of the Project that will occupy District's lands on the seabed.

This permit is subject to the following conditions:

1. Prior to initiating cable-laying and HDD operations, Permittee shall enter into a lease of the submerged lands from the Moss Landing Harbor District for the seabed area occupied by the Project. The lease will contain a provision(s) addressing concerns of commercial fisherpersons licensed to operate in Monterey Bay who may incur equipment damage or loss resulting from Project-related improvements.
2. Prior to initiating cable-laying and HDD operations, Permittee shall post a bond in an amount determined to be adequate to assure removal of Project improvements should it be abandoned or not used in the future. Instead of a bond, the Contract Officer for Permittee can execute a Guaranty Letter to assure performance. A Guaranty Letter, if used, shall be accompanied by an opinion from Permittee's counsel stating the Guaranty Letter will be binding on Permittee.
3. Permittee is required to comply with all requirements of CEQA and NEPA throughout the term of this Permit, including all conditions and mitigation measures set forth in the Project Final Environmental Impact Report/Environmental Impact Statement, certified by lead agency California State Lands Commission in August of 2005, which was reviewed by the District's environmental consultant and considered by the District's Board during the hearing on this permit.



4. Permittee shall be responsible for obtaining all permits necessary to move forward with its Project from any responsible agency or entity having jurisdiction over any aspect of the Project, and shall provide District with proof of the same prior to initiating cable-laying and HDD operations.
5. Prior to initiating cable laying and HDD operations, Permittee will prepare a Marine Mammal Monitoring Plan describing the protocols for marine mammal observations during cable installation and HDD activities, and submit the same to the Moss Landing Harbor District for approval.
6. The Permittee will coordinate cable laying activities and HDD operations with the Moss Landing Harbor District's General Manager, provide the District with all permits or clearances issued from other agencies for the project, comply with the Cable Act of 1992, is restricted from conducting construction during salmon season, and agrees that Cable laying and HDD operations will not interfere with any fishing activities within the territorial boundaries of the District.
7. Cable installation/placement and HDD operations shall in no way interfere with the Moss Landing Harbor District's dredging projects.
8. At all times during the performance of activities authorized by this permit, Permittee shall maintain insurance policies with acceptable levels of liability for injuries to persons, animals, or damages to property, which shall include comprehensive, general and automobile liability, all in an amount to be approved by the General Manager and District Counsel. Such insurance policies shall name the District, its appointed and elected officials, employees and agents as additional insureds.
9. Permittee agrees to indemnify and hold harmless District and its appointed and elected officials, employees and agents from claims, demands, causes of action and liabilities of every kind and nature whatsoever, including costs of defense, arising out of or in connection with Permittee's activities and operations performed under this Permit. This indemnification shall extend to claims occurring after this permit is terminated as well as while it is in force. This indemnity shall apply regardless of any active and/or passive negligent act or omission of District, its appointed and elected officials, employees and agents, but Permittee shall not be obligated to indemnify any party for claims arising from the sole negligence or willful misconduct of District. The indemnity set forth above shall not be limited by insurance requirements or by any other provision of this contract.

This Construction Permit is governed by the conditions stated above. Failure of Permittee to comply fully with any of the conditions stated above shall result in automatic revocation or suspension of the Construction Permit. This Construction Permit shall expire on November 13, 2006 unless revoked, surrendered or renewed.

Issued this 14th day of November, 2005.



Linda G. McIntyre, General Manager
Moss Landing Harbor District