

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



SEP 02 2005

PAUL D. THAYER, Executive Officer

(916) 574-1800 FAX (916) 574-1810

California Relay Service, From TDD Phone 1-800-735-2922
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1904

Contact FAX: (916) 574-1925

File Ref: PRC 8620.9

RA# 12903

Attn: Ms. Mandy Allen
Monterey Bay Aquarium Research Institute (MBARI)
7700 Sandholdt Road
Moss Landing, CA 95039

Dear Mrs. Allen:

Subject: General Lease – Right of Way Use

Enclosed is your fully executed General Lease – Right of Way Use, PRC 8620.9, for the construction, installation, operation, maintenance and use of the Monterey Accelerated Research Cable, located within sovereign lands, in the Pacific Ocean, offshore Moss Landing, Monterey County.

Our Accounting Office will be notifying you regarding a refund due or balance outstanding on this project within 90 days from the date of this letter.

The Commission appreciates your continued cooperation and patience in helping to complete this transaction. Please feel free to write or call if you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "Nancy Quesada".

NANCY QUESADA

Public Land Management Specialist

Enclosures

cc: Accounting

CALIFORNIA STATE LANDS COMMISSION

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Contact FAX: (916) 574-1925

August 5, 2005

File Ref: PRC W 25980/R12903

VIA FACSIMILE AND U.S. MAIL

Attn: Ms. Marcia K. McNutt
President and CEO
Monterey Bay Aquarium Research Institute (MBARI)
7700 Sandholdt Road
Moss Landing, CA 95039

Dear Ms. McNutt:

Enclosed in duplicate is the General Lease - Right of Way Use for the construction, installation, operation, maintenance and use of a submarine cable known as the Monterey Accelerated Research System Cable that will extend 51 kilometers or 31.7 miles oceanward, within sovereign lands, in the Pacific Ocean, in Monterey Bay, Monterey County. This lease is for a period of twenty-five (25) years beginning August 8, 2005 and ending August 7, 2030. Please note the additional revisions made to the Lease Agreement under Section 2, Paragraph 4, and Paragraph 7.

If you find the General Lease - Right of Way Use to be in order, please execute both copies before a notary public and return them to this office together with a certified copy of the resolution or other document authorizing execution on behalf of the Monterey Bay Aquarium Research Institute and return both copies to me no later than August 15, 2005. This Lease has been scheduled for the August 8, 2005, Commission meeting. Please note our Commissioners reserve the right to make modifications to the lease conditions up to the Commission meeting date. Once the Commission authorizes the Lease, you will be forwarded a fully executed copy.

Thank you and your staff for helping complete this matter.

Sincerely,


NANCY QUESADA

Public Land Management Specialist

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

County: Monterey

W 25980

LEASE PRC 8620.9

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 4
Section 3	Description of Lease Premises
Section 4	General Provisions
Exhibit A	Mitigation Monitoring Program

SECTION 1

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as "Lessor," acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to:

Monterey Bay Aquarium Research Institute, a nonprofit public benefit corporation

hereinafter referred to as "Lessee":

WHOSE MAILING ADDRESS IS:
7700 Sandholdt Road
Moss Landing, CA 95039

that certain strip of land described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

LEASE TYPE: General Lease - Right-of-Way Use

LAND TYPE: 20.63 acres more or less, of sovereign lands in the Pacific Ocean, hereinafter referred as "Lease Premises" in this Lease.

LOCATION: In Monterey Bay, offshore Moss Landing, Monterey County

LAND USE OR PURPOSE: Construction, installation, operation, maintenance and use of a submarine Cable known as the Monterey Accelerated Research System Cable "MARS" that will extend 51 kilometers or 31.7 miles oceanward, from the shore station in Moss Landing to a formation known as Smooth Ridge, Monterey Bay. A scientific node containing 8 science ports will be located at the end of the Cable, approximately 2,923 feet (891 m) below the ocean surface on Smooth Ridge. The node will contain eight separate science ports for oceanographic research instruments. The 10 kilowatts Cable will have a 1.1-inch (28-mm) outer diameter, hereinafter referred as "Cable" in this Lease. It will be wrapped with a galvanized steel layer for armoring. The Cable will have the ability to both convey electrical power from shore to the scientific node and to transmit data bi-directionally between the scientific node and the shore facilities. Collectively, these activities and improvements shall be referred to in this Lease as the "Project."

TERM: Twenty-five (25) years; beginning August 8, 2005; and ending August 7, 2030, unless sooner terminated as provided under this Lease.

CONSIDERATION: The public use and benefit; with the State reserving the right to set a monetary rent if the Commission finds such action to be in the State's best interest. Subject to modification by Lessor as specified in Paragraph 2(b) of Section 4 – General Provisions.

AUTHORIZED IMPROVEMENTS: Same as described under "Land Use and Purpose."

 EXISTING: N/A

X **TO BE COMPLETED BY:** August 2008

LIABILITY INSURANCE: Lessee shall maintain limits of no less than \$20 million per each occurrence until Lessee's final acceptance of the Project as complete. Upon the termination of insurance coverage with limits of no less than \$20 million, Lessee shall maintain limits of no less than \$5 million per each occurrence for the life of the Lease.

SURETY BOND OR OTHER SECURITY: \$500,000

SECTION 2 SPECIAL PROVISIONS

BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED OR SUPPLEMENTED AS FOLLOWS:

1. Lessee has entered into this Lease as a principal, and not in the capacity of agent for any third party. Furthermore, it is understood and agreed that no person or entity other than Lessee and those holding an interest in the premises with formal approval of Lessor in accordance with Section 4, Paragraph 10 ("Assignment, Encumbrancing and Subletting") shall acquire any interest in the Lease Premises or enforceable rights under this Lease.
2. Prior to construction, Lessee shall provide to Lessor copies of permits and any special requirements from all other agencies having jurisdictional authority over the Project. Lessee is authorized to construct, operate, and maintain only those improvements listed in Section 1. In accordance with the provisions of Paragraph 4(d) of Section 4, Lessee shall secure the written consent of Lessor prior to any additions to or alteration or modification of the improvements authorized hereunder.
3. Lessee agrees that the land description contained in Section 3 of this Lease is based upon information provided by Lessee prior to installation of the improvements. Upon Lessee's receipt and review of the as-built plans and post lay burial report, the description of the Lease Premises shall be amended in the event the improvements are installed outside of the Lease Premises.
4. Lessor reserves the right to modify the bond and insurance requirements effective on each fifth anniversary of the beginning date of this Lease including, but not limited to, the ability to raise or lower the amount of the bond and insurance requirements to commercial reasonable standards. No such modification shall become effective unless Lessee is given at least (30) days notice prior to the effective date of any modification to the bond or insurance requirements.
5. A new sub-paragraph is added to Section 4, Paragraph 6(b) ("Rules, Regulations and Taxes"), as follows:
 - (d) Prior to the commencement of work, Lessee shall secure the written authorization from the adjacent upland landowner, if not the Lessee, for access and for the construction and maintenance of the project improvements associated with the Lease. Further, Lessee shall provide Lessor with a copy of said authorization.
6. Lessee shall exercise its rights under this Lease so as to avoid, to the fullest extent reasonably possible, interference with the State's use of the Lease Premises or with the public's right to use the Lease Premises for public trust purposes, including without limitation, waterborne commerce, navigation, fishing, water-related recreation, habitat preservation, and open space.
7. A new sub-paragraph (5) is added to Paragraph 5 (a) of Section 4 ("Reservations, Encumbrances and Rights-of-Way"), as follows:
 - (5) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises to third parties for facilities or improvements that may cross over or under Lessee's authorized improvements. Lessee agrees that such a crossing shall not constitute or be deemed to be an inconsistent or incompatible use, nor a material interference with Lessee's improvements. Lessee shall cooperate to facilitate the installation, operation, maintenance, and abandonment of such

- b) A copy of the geotechnical report certified by a California registered Geotechnical Engineer including any geotechnical recommendations and confirmation of the adequacy of the proposed directional drilling program at the intended depth based on the existing subsurface conditions, and the geotechnical recommendations for the supporting structures for the near shore facilities.
- c) A copy of the contractor's work execution plan, including manufacturers specifications for the specific boring machine that will be used, its tolerance limits, MSDS for the drilling mud and its additives, and health and safety plan. Also, include any abandonment contingency plans in case the boring operations are forced to be suspended and a partially completed bore hole be abandoned.
- d) A copy of the latest construction schedule timeline chart.
- e) A project specific hazardous spill contingency plan, with specific designation of the onsite person who will have the responsibility of implementing the plan. The spill plan is to include potential minor and major spill scenarios, preventive measures, equipment available onsite, spill notification protocol and procedures, etc. The primary work vessel shall carry on board 400 ft. of sorbent boom, five bales of sorbent pads at least 18" x 18" square and a small powered boat for rapid deployment to contain and clean up any small spill or sheen on the water surface. The plan needs to also provide for the call out of additional spill containment and clean up resources in the event on an accident that exceeds the rapid clean up capability of the onsite work force. In the event of an oil spill during construction that impacts State waters, in addition to U. S. Coast Guard, notification shall also be provided as soon as possible to the State Office of Emergency Services at (800) 852-7550 and to Lessor's emergency response number (562) 590-5201.
- f) A critical operations and curtailment plan for work vessels operating in the State waters. The plan is to define the limiting conditions of sea state, wind, or any other weather conditions that exceed the safe operation of offshore vessels and equipment or divers in the water, that hinder potential spill cleanup or in any way pose a threat to personnel or the safety of the environment. The plan needs to provide for a minimum ongoing five (5) day advance favorable weather forecast during offshore operations. The plan also needs to identify the onsite person with authority to determine critical conditions and suspend the work operations when needed.

11. Lessee shall maintain a logbook on all work vessels utilized during offshore operations conducted under this Lease to keep track of all debris created by objects of any kind that fall into the water. The logbook should include the type of debris, date, time and location to facilitate identification and location of debris for recovery and site clearance verification.
12. At least two weeks prior to commencement of offshore construction activities, Lessee shall file an advisory of pending offshore construction operations with the local U. S. Coast Guard District Office for publication in the Local Notice to Mariners. Lessee shall provide Lessor a copy of the Notice to Mariners.

third-party facilities. From and after the installation of Lessee's facilities, any agreement entered into by Lessor authorizing third-party use of the Lease Premises for installation of facilities that will cross Lessee's Cable shall provide (i) that the rights granted thereunder will be exercised so as to minimize, to the fullest extent reasonably possible, interference with Lessee's use of the Lease Premises or damage to Lessee's Cable; (ii) that the third-party give notice to Lessee prior to the commencement of construction of the Cable crossing, and (iii) that the third-party give Lessee a reasonable opportunity to negotiate and enter into a Cable crossing agreement on such terms and conditions as may address and accommodate the respective right and uses of each party. The consent of Lessee to the terms and conditions of a crossing agreement shall not be a prerequisite to commencement of construction of the crossing. In the exercise of this provision, Lessor, Lessee, and any third-party authorized by Lessor, shall give consideration to International Cable Protection Committee (ICPC) Recommendation No. 2 (ICPC handbook Section No. 12.2; Recommendation No.2, Issue: 8; dated August 7, 2001).

8. In the event that the facilities and improvements to be installed under this Lease will cross any facility or improvements owned by a person or entity other than Lessee, Lessee shall secure and maintain the written consent to cross such facility or improvement from the owner thereof. Lessee shall file and maintain with Lessor copies of all such consents, together with any agreements between Lessee and third parties pertaining to the crossing of facilities and improvements located within the Leased Premises. The rights granted hereunder shall be exercised so as to minimize, to the fullest extent reasonably possible, interference with such third-party facilities and improvements.
9. Lessee acknowledges and agrees:
 - (a) The site may be subject to hazards from natural geophysical phenomena including, but not limited to, waves, storm waves, tsunamis, earthquakes, flooding, and erosion;
 - (b) To assume the risks to the Lessee and to the property that is subject of any Coastal Development Permit (CDP) issued for development on the Lease Premises, of injury and damage from such hazards in connection with the permitted development and use;
 - (c) To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees, for injury or damage from such hazards; and
 - (d) To indemnify, hold harmless and, at the option of Lessor, defend the State of California, its agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, injuries or costs of any kind and from any cause (including costs and fees incurred in defense claims), expenses, and amounts paid in settlements arising from any alleged or actual injury, damage or claim due to site hazards or connected in any way with respect to the approval of any CDP or issuance of this Lease, any new lease, renewal, or amendment.
10. At Least 60 days prior to commencement of construction activities, Lessee shall provide Lessor with the following:
 - a) A set of final engineering drawings as issued for construction showing all details such as coordinates for both exit and entry pits, proposed alignment bearing, minimum bend radius and the California State Lands Commission boundaries, structural details for foundation and support structures for the near shore facilities, etc. certified by a California registered Civil/Structural Engineer.

13. Lessee shall provide a three-day advance notice to Lessor's Mineral Resource Management Division (MRMD) prior to commencing any directional boring of offshore Cable laying operations. Lessee shall also make reasonable efforts to accommodate and provide access and transportation to Lessor's staff in order to witness the boring and Cable laying operations. Lessor's contact for this purpose is MRMD Project Engineer at (562) 590-5209. Lessee shall also provide a contact name and notification list to Lessor in order to schedule field visits to the job site during construction.
14. Lessee shall provide Lessor with a copy of the post installation monitoring, maintenance, and inspection program.
15. Within 90 days of completion of the Project, provide the following information to Lessor:
 - a) A set of "as-built" plans certified by a California registered Civil Engineer, showing the final plan and profiles of the facilities in the Lease Premises, and all field changes or other modifications to the plans as originally approved for construction.
 - b) A post construction written report confirming completion in accordance with the approved plans, describing any field changes with the justification, any accidents or spills affecting the waterway and corrective measures taken, and any other extraordinary conditions that occurred during the course of the Project.
 - c) All future repairs, structural modifications or abandonment/removal of the facilities within the Lease Premises will require prior review and approval by Lessor's engineering staff. Abandonment or removal shall also be consistent with the requirements of Section 2, Paragraph 19. In the event of an urgent repair requiring immediate action, telephone contact can be made through Lessor's 24-hour emergency response number (562) 590-5201.
16. Surveys of the Cable route during and following installation to determine the Cable's burial status shall be performed by Lessee and reports submitted to Lessor in a manner specified by Lessor as follows:
 - a) Within 90 days of acceptance by the Lessee of the work as complete by the contractor, Lessee shall provide to Lessor a copy of the Cable post lay burial report and a set of as-built Cable coordinates;
 - b) Lessee shall perform an initial re-survey of Cable burial no earlier than 18, but no later than 24, months after the date of completion of Cable installation. Within 30 days of the conduct of such survey, Lessee shall submit the survey report to Lessor;
 - c) Lessee shall perform a second re-survey of Cable burial no earlier than 18, but no more than 24, months after the date of completion of the initial re-survey. Within 30 days of the conduct of such survey, Lessee shall submit the survey report to Lessor;
 - d) The interval of subsequent re-surveys of Cable burial during the term of this Lease shall be determined by Lessor following its receipt of the survey report of the second re-survey of Cable burial and its comparison of such results with the results of the initial re-survey required in (b) above; and

- e) Lessee shall perform episodic surveys of the burial status of the Cable subsequent to events that would be expected to affect such status, including, but not limited to, seismic events and upon notice that fishing gear has become entangled with the Cable.

17. Lessee acknowledges that the Mitigation Monitoring Program and Environmental Conditions adopted by the Lessor at the time of approval of this Lease are attached as Exhibit "A" to this Lease and are incorporated as a part of this Lease by reference. Lessee agrees to be bound by and perform all of the Terms and Conditions contained in the Mitigations and Monitoring Program and Environmental Conditions adopted by Lessor. Lessee shall be responsible for all costs associated with the Mitigations Monitoring Program.

18. To prevent or minimize losses to commercial fishermen licensed to operate in Monterey Bay that may occur if fishing gear is damaged by, or lost on, the authorized improvements, the Lessee shall:

- a) Within 90 calendar days of acceptance by the Lessee of the work as complete by the contractor, Lessee shall distribute to any fisherman legally authorized to trawl in the Lease Premises such written documentation indicating the "as-built" Cable coordinates and Cable burial depths as are reasonably necessary to show the accurate position and depth of the Cable. Such documentation shall also be filed with the Office of the Moss Landing Harbor Master, with Monterey Bay Accelerated Research Institute, with the Monterey Bay National Marine Sanctuary office in Monterey, California, and with the California Department of Fish and Game, Marine Region Headquarters in Monterey, California. Such documentation shall also be made available from Lessee on request;
- b) Within 90 calendar days after Lessee's final acceptance of the Project as complete, Lessee shall provide necessary information to NOAA so navigational charts and aids can accurately show the location and depth of the Cable. Lessee shall supply the same information to the U.S. Coast Guard by a Local Notice to Mariners;
- c) Lessee shall meet once with the designated representative(s) of the Alliance of Communities for Sustainable Fisheries (ACSF) and trawlers legally authorized to fish in the Lease Premises, prior to installation to coordinate Lessee and commercial fishing activities to avoid navigational and spatial conflicts, and to discuss operational issues to include, but not be limited to, fishing procedures to be followed in the vicinity of the Cable, and coordination between fishermen and Lessee research and service activities. Lessee shall participate in a similar meeting within three months after Lessee's final acceptance of the Project as complete, and thereafter, quarterly for the remainder of the first year of Cable operation, every six months during the second year, and thereafter at least once annually. The meetings shall take place at a time and location in Monterey County, California selected by ACSF and convenient to fishermen, to exchange information and to address any administrative or other issues which have arisen in connection with the Cable. Lessee shall designate a Fisheries Liaison ("Liaison") to coordinate with licensed fishermen for the same purposes on an ongoing basis throughout the Lease term;
- d) Lessee shall maintain its existing, fully-staffed 24-hour telephone hotline and shall provide the hotline telephone number and the name of the Liaison, in writing, to any

fisherman licensed to trawl in the Lease Premises and to any other party who requests such information. Lessee shall also provide its hotline number to NOAA for inclusion in the Notice to Pilots. Should Lessee's hotline number or Liaison change, Lessee shall provide its new number to those persons and entities listed in this sub-paragraph (d) and in sub-paragraphs (a) and (c) immediately above. If a fisherman believes he or she has snagged or damaged the Cable, he or she shall immediately notify Lessee, through Lessee's 24-hour hotline, of the location of his or her vessel by GPS coordinates at the time of the actual or suspected snag or damage. If, due to serious adverse weather conditions or other emergency conditions, the fisherman is unable to immediately contact Lessee, he or she shall note the date, time and location of the actual or suspected snag, and shall thereafter provide notice to Lessee of the actual or suspected Cable snag or injury as soon as the emergency conditions have abated. Lessee will, pursuant to the provisions of Paragraph 20(e), immediately investigate the report and provide its findings on damage to the Cable, on written request, to the fisherman involved, within 10 days after Lessee obtains such findings. Such documentation shall also be made available from Lessee on request;

- e) After notice by a fisherman legally authorized to trawl in the Lease Premises to Lessee on Lessee's hotline, of a suspected or actual snag of, or other damage to, the Cable, and if, at Lessee's direction, the fisherman immediately sacrifices trawling gear which snags the Cable, Lessee will pay one hundred percent (100%) of actual reasonable retail replacement cost of gear comparable to the sacrificed gear, or the reasonable cost to repair any damaged gear, and the wholesale market value, at the fisherman's port of destination, of any catch lost with the gear. The Liaison will consult with the designated representative(s) of the ACSF and may consult with other licensed fishermen regarding any submitted claim. Lessee is not required by this Lease to pay claims unless Lessee is notified on its hotline number by fisherman within 24 hours of any actual or suspected Cable snag or damage;
- f) Lessee's payment for damaged or sacrificed gear and lost catch will be made as soon as possible but no later than ten (10) days after Lessee has been provided written documentation, including invoices or bids for the replacement cost of the gear or the reasonable cost to repair the gear, and the wholesale market value of the lost catch with certification of a claim form that the claim for payment is being made by the owner of the sacrificed or damaged gear;
- g) Lessee will release all claims against any fisherman legally authorized to trawl in the Lease Premises who, while using reasonable care, snags the Cable, if the fisherman immediately notifies Lessee of the snag or other contact with the Cable on Lessee's hotline and cuts loose his or her gear, as directed by Lessee, to prevent further damage to the Cable. Lessee will also refrain from taking any administrative, legal, or other action to sanction and/or recover damages against a fisherman who notifies Lessee of a probable snag or damage on Lessee's hotline and who is directed by Lessee to cut loose his or her gear to prevent further damage to the Cable. Lessee is not required by this Lease to release claims for Cable damage or refrain from taking administrative or legal action against a fisherman who damages the Cable, unless Lessee is notified on its hotline number by the fisherman within 24 hours of any actual or suspected snag or damage.

- h) Lessee will agree to submit, no later than 30 days after a dispute arises, any dispute with a fisherman legally authorized to trawl in the Lease Premises over reimbursement for lost or damaged gear or lost catch to mediation by a mediator mutually selected by the parties. As used in this provision, the term mediator includes any individual deemed to be independent by the parties and may include, for example, a representative of a committee associated with any other West Coast Cable. Lessee will agree to pay half the costs of any mediation. If the dispute is not resolved by mediation within 30 days, Lessee will agree to submit the dispute to binding arbitration before a single arbitrator selected by mutual agreement of the parties, or if the parties cannot agree, then selected in accordance with the California Arbitration Act then in effect (Code. Civ. Proc. §1280, et. seq.), with said arbitration to occur no later than 60 days after the dispute arose. Lessee will also agree that the arbitrator will be authorized to award any arbitration costs and attorneys' fees incurred in the arbitration to the prevailing party in the arbitration as a part of the arbitrator's award.

19. Subparagraphs (a) through (c) of Paragraph 12 of Section 4, Restoration of Lease Premises, are deleted, and the following subparagraphs are substituted in their places:

- (a) Upon expiration or sooner termination of this Lease, Lessee shall, subject to (c) below remove all portions of the Cable, scientific equipment, and all material or structures within the Lease Premises, including fills, in accordance with the methods and schedule of a Cable removal plan developed and paid for by Lessee pursuant to subparagraphs (b) and (c), below, as that plan is approved by the Lessor.
- (b) The Lessee shall submit a final Cable removal plan to the Lessor and to all appropriate agencies and governmental entities 18 months prior to the expiration or sooner termination of this Lease. The plan must contain the following:
 - 1) A detailed description of the methods to be employed to remove the Cable and all other improvements listed in subsection (a) immediately above, including their ultimate dispositions;
 - 2) A supplemental environmental information that addresses any differences between the impacts described and analyzed in the EIS/EIR and the planned removal operations, to enable Lessor to comply with applicable state and federal environmental laws and regulations;
 - 3) A schedule for completion of the removal of the Cable by 90 days following the expiration or sooner termination of this Lease, unless that term is extended in writing by the Lessor; and
 - 4) Identification of the entities to be employed to execute the Cable removal plan.
- (c) The Lessor may choose to direct Lessee to leave all or a part of the improvements within the Lease Premises in place. Should that occur, Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such remaining improvements to Lessor free and clear of any liens, mortgages, loans or other encumbrances.

/ /

SECTION 3

W 25980

LAND DESCRIPTION

A 3.078 meter (10.10 foot) wide strip of submerged lands in the bed of Monterey Bay and the Pacific Ocean lying between the Grant to Moss Landing Harbor District, as show on that Record of Survey of Grant to Moss Landing Harbor District recorded January 8, 1985 in Book 13, Page 212, Official Records of Monterey County and the State of California Offshore Boundary west of Santa Cruz and Monterey Counties, State of California, and the centerline of said strip more particularly described as follows:

COMMENCING at a US Coast and Geodetic Survey horizontal control station disk stamped "Castroville 1910 1962" set in the top of a 14 inch square concrete post flush with the ground having a Latitude of 36°46'27.4017" North and a Longitude of 121°47'43.4681" West; thence N02°25'03"W 3898.367 meters to a point on the westerly line of the Moss Landing Harbor District Grant, said point having a Latitude of 36°48'33.8423" North and a Longitude of 121°47'48.1241" West and being the TRUE POINT OF BEGINNING; thence along the centerline the following seven (7) courses;

- (1) N65°25'38"W, 208.579 meters;
- (2) N43°33'38"W, 226.828 meters;
- (3) N45°27'02"W, 5545.297 meters;
- (4) N61°44'37"W, 2669.522 meters;
- (5) N70°43'53"W, 8228.437 meters;
- (6) N88°28'47"W, 7798.269 meters;

(7) S59°52'23"W, 2447.501 meters more or less to a point on the State of California Offshore Boundary, said point having a Latitude of 36°52'32.9992" North and a Longitude of 121°04'07.0956" West and being the POINT OF TERMINATION.

The side lines of said strip of submerged lands to be prolonged or shortened at said grant boundary, said State of California Offshore Boundary, and at angle-point intersections.

BASIS OF BEARING for this description is Universal Transverse Mercator Projection (UTM), Zone 10, NAD 1983. Bearings and distances are Grid in meters. Geographical coordinates are NAD 1983.

EXCEPTING THEREFROM any portion lying landward of said grant boundary and westerly of the State of California Offshore Boundary.

END OF DESCRIPTION

Prepared by the California State Lands Commission Boundary Staff July 12, 2005.



SECTION 4

GENERAL PROVISIONS

1. GENERAL

These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

2. CONSIDERATION

(a) Categories

(1) Rental

Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

(2) Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

(b) Modification

Lessor may modify the method, amount or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

(c) Penalty and Interest

Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

3. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

4. LAND USE

(a) General

Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and

within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

(c) Repairs and Maintenance

Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

(d) Additions, Alterations and Removal

(1) Additions - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

(e) Conservation

Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

(f) Toxics

Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

(g) Enjoyment

Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use

and enjoyment of the Lease Premises as provided under this Lease.

(h) **Discrimination**

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) **Residential Use**

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. **RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY**

(a) **Reservations**

- (1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.
- (3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) **Encumbrances**

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances and claims and is made without warranty by Lessor of title, condition or fitness of the land for the stated or intended purpose.

6. **RULES, REGULATIONS AND TAXES**

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtain and maintain all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. **INDEMNITY**

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury or casualty on the Lease Premises.

8. **INSURANCE**

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.

(b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the

policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

9. SURETY BOND

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise

transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give prior written notice to Lessor;

(2) Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrancing or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of

or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

11. DEFAULT AND REMEDIES

(a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or
- (7) Lessee's failure to comply with applicable provisions of federal, state or local laws or

ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Remedies

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice Lessee shall immediately surrender possession of the Lease Premises to Lessor;
- (3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

(c) All plans for and subsequent removal and restoration

shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

(e) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

13. QUITCLAIM

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

14. HOLDING-OVER

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty-five percent (25%).

15. ADDITIONAL PROVISIONS

(a) Waiver

- (1) No term, covenant, or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived, by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.
- (2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) Notice

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes

This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties.

(f) Successors

The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) Joint and Several Obligation

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) Captions

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

(i) Severability

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

STATE OF CALIFORNIA - STATE LANDS COMMISSION

W 25980/ LEASE P.R.C. NO. 8620.9

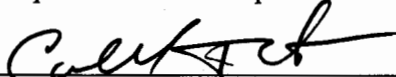
This lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee.

The submission of this Lease by Lessor, its agent or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE

Monterey Bay Aquarium Research Institute,
a nonprofit public benefit corporation

By: 

Date: 8/11/05

By: _____

Date: _____

ACKNOWLEDGEMENT

**STATE OF CALIFORNIA
STATE LANDS COMMISSION**

By: 
Chief, Division of
Land Management

Title: _____

Date: SEP 02 2005

This Lease was authorized by the
California State Lands Commission on

AUG 08 2005

(Month Day Year)

NOTARY ACKNOWLEDGEMENT

State of California
County of Monterey

On this 11th day of August in the year of 2005,

Before me Charlene Smith, a Notary Public, duly commissioned and qualified in above said County and State, personally appeared C. MICHAEL PINTO, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon which the person acted, executed the same.

WITNESS my hand and official seal.

NOTARY SIGNATURE:



NOTARY SEAL:

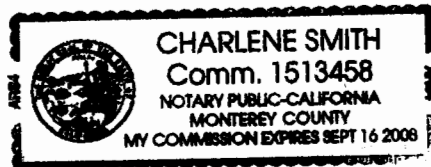


Table 6.5-1. Mitigation Monitoring Program

Impact	Mitigation Measure	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
Air Quality						
AQ-1: Vessels used for construction and decommissioning could exceed daily emission thresholds for ozone precursors and particulate matter.	MM AQ-1a: Use low-emission fuel on all diesel-powered vessels and construction equipment.	HDD site.	Construction contractors shall retain receipts of fuel purchases to verify use of CARB on-road diesel fuel.	Use of low-emission fuels verified, thereby reducing NOx exhaust emissions.	CSLC/ MBNMS	During construction.
	MM AQ-1b: Contribute to a NOx off-site emission reduction program.	N/A	MBARI shall fund an off-site emission reduction program identified by the MBUAPCD.	Evidence submitted of funding contribution to an off-site emission reduction program.	CSLC/ MBNMS	Prior to construction.
Cultural Resources						
CR-1: The Project could disturb unknown prehistoric sites that lie along the sea route between the +24.5-mile (39.4-km) and +29.0-mile (46.7-km) marks.	MM CR-1: Review existing sub-bottom profiler data and avoid any potential archeologically sensitive areas.	Sea route.	MBARI shall submit archival research results to the CSLC and MBNMS.	Archival research verified as complete and in accordance with professional standards.	CSLC/ MBNMS	Prior to construction.
Marine Vessel Transportation						
MVT-4: Potential cumulatively increased risk of marine vessel conflict during construction	MM MVT-4: Schedule proposed Project construction so as to avoid the presence of a cable lay vessel within 1.15 miles (1 nm) of vessels performing borehole construction.	Sea route.	Verify scheduling and locations of cable laying and borehole projects.	Conflicts between marine vessels avoided.	CSLC/ MBNMS	During construction.

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Impact	Mitigation Measure	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
Noise						
NOI-1: Construction equipment could cause noise levels exceeding the 85 dBA limit of the Monterey County Noise Control Ordinance	MM NOI-1a: Muffle, shield, or enclose the HDD activity.	HDD site.	Measure noise level at 50 feet with County-approved noise meter.	Noise levels reduced below 85 dBA at 50 feet from the HDD site.	CSLC/ MBNMS	During HDD operations.

Table 6.5-2. Monitoring Program for Applicant-Proposed Protective Measures

Affected Resource Area	Applicant-Proposed Protective Measures	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
Geology and Soils, Marine Water and Sediment Quality and Oceanography	Place cable as perpendicular to slopes as possible and avoid possible areas of sediment slump or slides.	Sea route.	Review cable route in comparison to seafloor profile prior to cable laying. Review post-lay inspection results.	During post-lay inspection, verify that the cable is laid perpendicular to steep slopes to the maximum extent possible.	CSLC/ MBNMS	Before, during, and after cable installation.
Commercial and Recreational Fisheries	In the event fishing gear cannot be removed from the cable by surface vessels, the Applicant will utilize an ROV to remove the gear from the cable. If all attempts to remove the gear fail, the gear would be left in place but rendered incapable of harvesting marine resources.	Sea route.	Notify MBNMS if cable snag and gear entanglement.	Verify that gear has been removed from cable and fishermen compensated for lost gear.	CSLC/ MBNMS	After cable installation.

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Affected Resource Area	Applicant-Proposed Protective Measures	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
Marine and Near-Coastal Biological Resources	In areas where cable burial is not possible, additional cable armoring consisting of single armor light cable sheathing will be used and fishers will be notified of locations of exposed cables.	Sea route.	Review plans for cable armoring prior to installation.	Verify that additional armoring is used in all locations where cable is exposed.	CSLC/ MBNMS	Before, during, and after cable installation.
	Provide notice to the Moss Landing Harbor District and work with the District to provide notice of the cable laying operation to vessels that operate out of Moss Landing Harbor.	Sea route.	Verify that the Moss Landing Harbor District received notification.	Review methods used by the Moss Landing Harbor District to notify vessel operators and evaluate the effectiveness of the notification methods.	CSLC/ MBNMS	Before cable installation.
	Establish a 500-foot (152-m) minimum safety zone along the proposed cable route to avoid marine mammals.	Sea route.	Confirm that a safety zone has been established and procedures implemented for suspending cable laying if a marine mammal enters the safety zone.	Verify that purpose of the safety zone is understood by the vessel crew and procedures for suspending cable laying are followed.	CSLC/ MBNMS	During cable installation.
	Two NOAA Fisheries-approved marine mammal monitors will be on watch on each vessel (cable-lay and support vessels) during cable laying activities to ensure that any marine mammal entering the established (minimum) 500-foot (152-m) safety zone is sighted.	Sea route.	Monitor and report the presence of marine mammals in the safety zone.	Verify that cable laying is suspended when a marine mammal enters the safety zone.	CSLC/ MBNMS	During cable installation.

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Affected Resource Area	Applicant-Proposed Protective Measures	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
	Limit cable-laying vessel speed limits to less than 2 knots. Moderate speed of support vessels (3-5 knots) to minimize the likelihood of collisions with marine mammals and sea turtles.	Sea route.	Monitor vessel speed during cable laying operations.	Verify that vessel speed is moderated and collisions with marine mammals and sea turtles are avoided.	CSLC/ MBNMS	During cable installation.
	Reduce or minimize propeller noise (through reduction of vessel speed) and other noises associated with cable laying activities to the extent possible.	Sea route.	Monitor vessel speed during cable laying operations.	Verify that vessel speeds are kept to the minimum to the extent possible during cable laying operations.	CSLC/ MBNMS	During cable installation.
	Minimize the amount of external lighting at night and shield lights downwards in order to minimize marine bird-vessel collisions.	Sea route.	Monitor the amount of external lighting in use during night operations.	Verify that all unnecessary vessel lights are kept off during nighttime cable laying operations.	CSLC/ MBNMS	During cable installation.
	Develop and implement a Marine Mammal Monitoring Plan that will be utilized during cable installation.	Sea route.	Confirm that the protocols prescribed in the approved Marine Mammal Monitoring Plan are followed during cable installation.	Verify that is the protocols are understood by the marine mammal monitors and crew and that the protocols serve to avoid collisions and other direct effects on marine mammals in the area.	CSLC/ MBNMS	During cable installation.

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Affected Resource Area	Applicant-Proposed Protective Measures	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
Marine Water and Sediment Quality and Oceanography	An approved Spill Prevention Control and Countermeasure Plan will be implemented during all cable laying and operation/maintenance activities.	Sea route.	Confirm approval of the Spill Prevention Control and Countermeasure Plan prior to cable installation. Monitor spill clean-up for compliance with all applicable plan procedures.	Verify that the Spill Prevention Control and Countermeasure Plan is properly implemented in the event of a spill.	CSLC/ MBNMS	During cable installation and operation.
	A fast response vessel will be available during installation with an absorbent boom for spill control.	Sea route.	Confirm the availability of the fast response vessel during all cable laying operations and that it is properly equipped with an absorbent boom.	Verify that the fast response vessel is able to quickly respond to a spill and effectively deploy the absorbent boom.	CSLC/ MBNMS	During cable installation.
	Avoid grapnel retrieval near outcrops by consulting charts and relocating repair to soft substrate.	Sea route.	Confirm that grapnel retrieval near outcrops does not proceed until proper charts are consulted.	Verify that outcrops are not damaged by grapnel retrieval.	CSLC/ MBNMS	During cable installation and cable repair operations.
	In the event that a repair in a heavily fished area is necessary, notify fishermen and charter a local fishing vessel to patrol the area to minimize the possibility of interference with fishing operations.	Sea route.	Confirm that notice is provided to fishermen and that a vessel is chartered to patrol the area.	Verify that noticing and patrols are effective in keeping fishing vessels away from the immediate area.	CSLC/ MBNMS	During cable repair operations.
	Place plastic barriers under drilling equipment and oil absorbent blankets around hydraulic components to add protection between the rig and ground surface in order to contain potential spills.	HDD site.	Confirm the placement of barriers and blankets prior to the initiation of drilling.	In the event of a spill, verify that the installed barriers and blankets are effective in containing the spill.	CSLC/ MBNMS	During HDD operations.

Affected Resource Area	Applicant-Proposed Protective Measures	Location
	Prior to HDD operations, construction personnel shall attend an environmental training session conducted by the Environmental Monitor.	HDD site.
	Once all the HDD equipment is in place, place silt fence and hay bales around the work perimeter and around the sump pit and mud system.	HDD site.
	During the HDD operation, as each joint of pipe is set onto the drill rig, perform a visual inspection to make sure no debris is sent down the pipe that could cause a problem during cable installation.	HDD site.
	During the HDD operation, constantly monitor the drill path for surface releases and maintain constant communication between the monitoring vessel and the control cab at all times.	HDD site.
	In the event of a subsurface release, divers equipped with specialized water lifts (pumps) and filter bags will remove bentonite from the sea floor.	HDD site

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Affected Resource Area	Applicant-Proposed Protective Measures	Location	Monitoring / Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
	In the event of a bentonite release on land, immediately contain the release and transfer the fluid back to the drill site for reuse or into a storage tank and removed from the site.	HDD site.	Monitor the containment and transfer of the bentonite.	Verify that containment procedures are implemented promptly and that bentonite is fully retrieved.	CSLC/ MBNMS	During HDD operations.
	Once the HDD operation is complete, return the work area to its original condition or better to the satisfaction of all permitting agencies, public works inspectors, and supervising engineer.	HDD site.	Monitor work site clean up to verify removal of all equipment and materials. Monitor actions to restore the ground surface and vegetation.	Verify that the site is returned to its original condition and that permitting agencies and inspectors are satisfied with the restoration of the site.	CSLC/ MBNMS	During HDD operations.
Marine Vessel Transportation	The Applicant will coordinate cable laying activities with the U.S. Coast Guard regarding publication of a notice in the U.S. Coast Guard's Local Notice to Mariners.	Sea route.	Notify U.S. Coast Guard regarding cable laying activities.	Verify that Notice to Mariners has been issued.	CSLC/ MBNMS	Before, during, and after cable installation.

NO SCALE

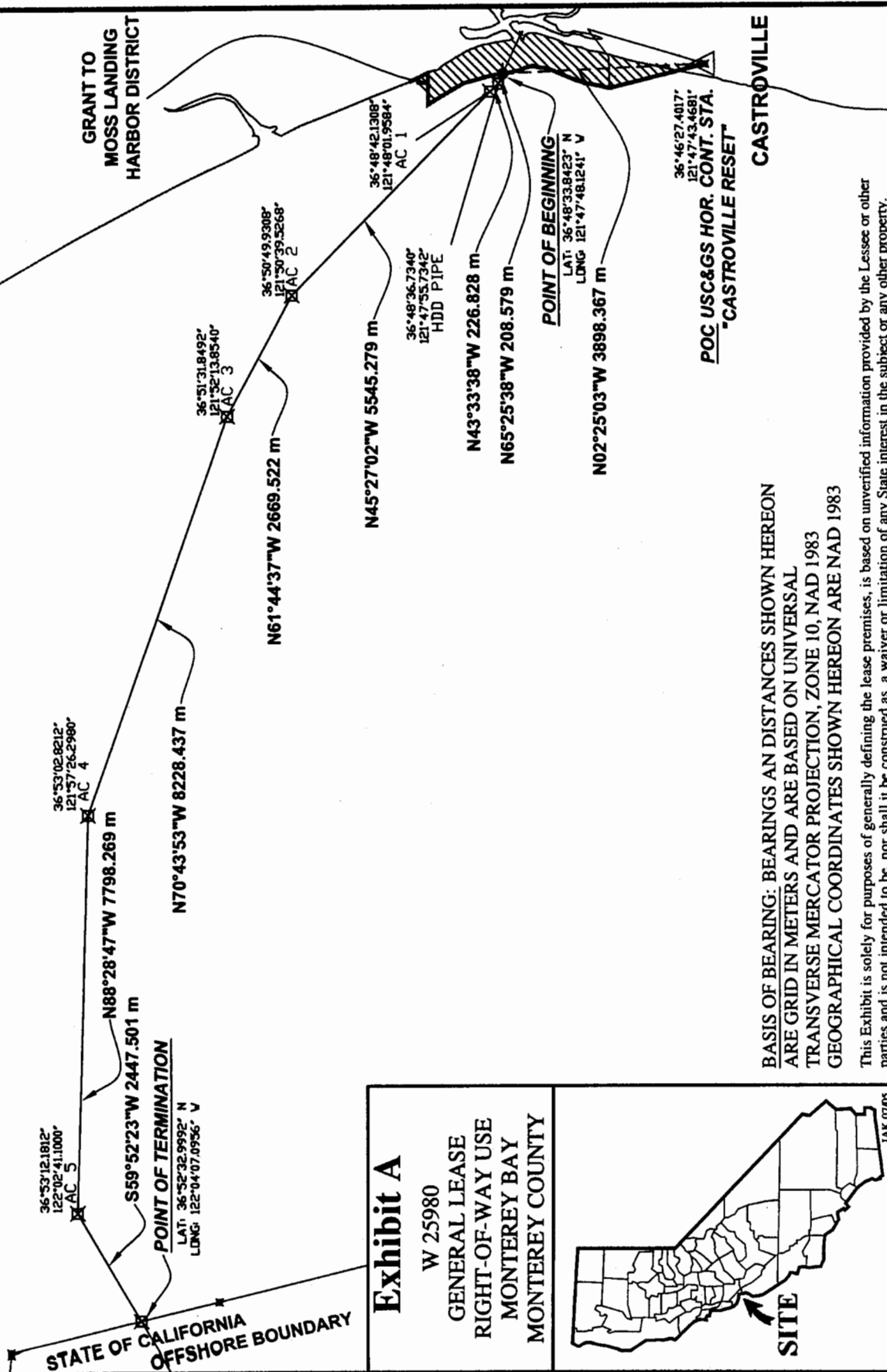
SITE

MONTEREY BAY RESEARCH INSTITUTE,
MARS CABLE

WATSONVILLE

GRANT TO
MOSS LANDING
HARBOR DISTRICT

CASTROVILLE

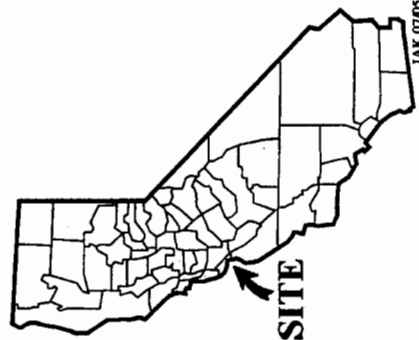


BASIS OF BEARING: BEARINGS AND DISTANCES SHOWN HEREON
ARE GRID IN METERS AND ARE BASED ON UNIVERSAL
TRANSVERSE MERCATOR PROJECTION, ZONE 10, NAD 1983
GEOGRAPHICAL COORDINATES SHOWN HEREON ARE NAD 1983

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit A

W 25980
GENERAL LEASE
RIGHT-OF-WAY USE
MONTEREY BAY
MONTEREY COUNTY



JAK 07/05