MINUTE ITEM

This Calendar Item No. C27 was approved as Minute Item No. 27 by the California State Lands Commission by a vote of 2 to 0 at its 12-08-05 meeting.

CALENDAR ITEM
C27

A 33

S 18

12/08/05
PRC 8152.1
B. Dugal
R. Nobles

CONSIDER ASSIGNMENT OF LEASE FROM PC LANDING CORP. TO REORGANIZED PC LANDING CORP. PURSUANT TO AN APPROVED PLAN OF REORGANIZATION IN BANKRUPTCY PROCEEDINGS AND AMENDMENT OF LEASE

LESSEE/ASSIGNOR:

PC Landing Corp.
5956 Sherry Lane, #1000
Dallas, Texas 94105

ASSIGNEE:

Reorganized PC Landing Corp.
5956 Sherry Lane, #1000
Dallas, Texas 94105

AREA, LAND TYPE, AND LOCATION:

11 acres, more or less, of sovereign lands in the Pacific Ocean, offshore of the city of Grover Beach, San Luis Obispo County.

AUTHORIZED USE:

The construction, installation, operation, maintenance, and use of two 5.25-inch steel conduits and two fiber optic cables.

LEASE TERM:

Ten years, beginning April 20, 2000, with the right to renew for one additional period of 15 years, subject to such reasonable renewal terms and conditions as the State may impose.

CONSIDERATION:

$242,075 per annum, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

BACKGROUND INFORMATION:

Lease Issued: On April 20, 2000, the Commission adopted a Mitigated Negative Declaration (MND) and approved the issuance of lease PRC 8152.1 (the "Lease") to PC Landing Corp. (PC Landing), for the construction, operation and maintenance of two conduits and two fiber optic cables, sometimes referred to as the PC-1 cable system.

Bankruptcy Filed, Lease Defaults: On July 19, 2002, PC Landing, and related debtors (the "Debtors") filed a voluntary petition in the United States Bankruptcy Court for the District of Delaware seeking relief under Chapter 11 of the Bankruptcy Code. At the time of the filing of the bankruptcy petition, the Debtors were financially insolvent, lacked sufficient working capital to continue the long-term operation of the PC-1 cable system, and were in default with respect to certain non-monetary terms and conditions of the Lease. Pre-petition debt of the Debtors was stated to be $716 Million. Since the filing of the bankruptcy petition, PC Landing has defaulted on rental obligations under the Lease and continues to be in default with respect to the following lease requirements:

1) Payment of Rent: Annual rent for PRC 8152.1 is $242,075. PC Landing has paid $12,500 monthly towards the 2004 rent and has a balance due, as of November 15, 2005, of $359,150 for the rental period of April 20, 2004, to April 20, 2006.

2) Cable Burial: The Lease, consistent with the project originally proposed by PC Landing in its application to the Commission, requires that the PC-1 cables be completely buried from the end of the conduits to the 1,000-fathom isobath (6,000 ft., roughly 1800 meter water depth, and 28.8 miles offshore) to a target burial depth of between 0.6 to 1.0 meters. However, as discussed in Environmental Issues, there are sections of the cables that are exposed, either on or suspended above the seabed.

3) Performance Bond: PC Landing is also required to post and maintain a surety bond in the amount of $1,000,000 to guarantee the performance of all of the terms, covenants and conditions of the Lease. PC Landing provided the required bond, but has allowed the bond to be cancelled and has failed to furnish a replacement bond.

Failed Attempt to Sell Assets: On June 3, 2003, the Bankruptcy Court entered a Sale Order (the "Sale Order") approving the sale of substantially all of the assets of the Debtors, including PC Landing's interest in the Lease, to Pivotal

Telecom, LLC ("Pivotal") for $63 Million. The Sale Order provided that the Debtors endeavor to secure the consent of certain federal, state and local agencies to the transfer of the leases, licenses and permits that such agencies issued in connection with the PC-1 cable system. On October 20, 2003, the Commission approved a conditional assignment of Lease PRC 8152.1 to Pivotal. However, PC Landing and Pivotal were unable to consummate the sale. Due to the failure to meet the conditions of the assignment, the authorization to assign granted by the Commission's action is of no force and effect and PC Landing remains the Lessee.

Disputes Between CLSC and PC Landing and the Settlement Agreement: During the course of the bankruptcy, certain disputes have arisen between the CSLC and PC Landing. The disputes include: (A) PC Landing's performance and obligations under provisions of PRC 8152.1 requiring: (1) PC Landing's annual payment of rent in the amount of $242,075 in April of each year; (2) that PC-1 be completely buried from the duct ends to the 1,000 fathom isobath; (3) that PC Landing conduct cable burial verification surveys at intervals of 18 to 24 months for the first five years with subsequent frequency to be determined; and (4) that PC Landing maintain a surety bond or other security in the amount of $1,000,000; and (B) whether PRC 8152.1 is a non-residential real estate lease under section 365 of the Bankruptcy Code and whether PC Landing automatically rejected PRC 8152.1 by failing to include PRC 8152.1 in an exhibit to a motion to extend time to assume or reject PRC 8152.1.

On August 26, 2005, the Commission, Pacific Crossing, Ltd. and PC Landing entered into a Settlement Agreement, attached as Exhibit B, in order to resolve these disputes and all outstanding Lease issues between the parties. The Settlement Agreement was conditioned upon: (i) the entry of an order by the Bankruptcy Court under Bankruptcy Code section 365 and Bankruptcy Rule 9019 authorizing PC Landing to assume PRC 8152.1 and settle and compromise the disputes between the Parties; and (ii) the approval by the Commission at a public meeting of the proposed lease amendments. On September 28, 2005, the Bankruptcy Court granted the motion to assume the lease and settle the disputes and on October 3, 2005, PC Landing submitted an application to amend the Lease as outlined in the Settlement Agreement. The Settlement Agreement provides that the Commission retains the discretion as to whether or not to approve the proposed amendment of the Lease, provided however, if the Commission elects not to approve the amendment of the Lease as provided in the Settlement Agreement, PC Landing will have the right to terminate the Settlement Agreement, in which event, the parties would be restored to their pre-

settlement positions with regard to the disputed lease issues and pending litigation before the Bankruptcy Court.

If approved by the Commission, the lease amendment will implement the Settlement Agreement and will result in the resolution of the disputes and issues, which in turn will achieve certainty for the parties, preserve PRC 8152.1 for PC Landing, and would facilitate the continued viability of an important communication link between the United States and Japan.

The Plan of Reorganization and Request for Approval to Assign: PC Landing and its affiliated debtors (collectively, the "PCL Debtors") are pursuing a stand-alone reorganization as the best option to maximize creditor value and provide for continuity of customer operations, and have filed with their Bankruptcy Court, a plan of reorganization. On November 10, 2005, the Bankruptcy Court for the District of Delaware, Case No. 02-12086, confirmed the Second Amended Joint Plan of Reorganization of PC Landing Corp. and its affiliated debtors, as modified (the "Reorganization Plan"). The State's Lessee under PRC 8152.1, PC Landing Corp., is owned (through an intermediate, wholly-owned subsidiary) by Pacific Crossing Ltd. ("PCL"). PCL, in turn, was previously owned 84.5% by Asia Global Crossing Ltd. ("AGC") through two subsidiaries of AGC, prior to AGC itself filing for chapter 11 bankruptcy. AGC has subsequently sold substantially all of its assets other than its ownership interest in PCL, and its chapter 11case has been converted to a chapter 7 case with the appointment of an interim trustee. The Reorganization Plan provides that through a reorganized Bermuda parent company, which will be named Pacific Crossing Limited ("New PCL Bermuda"), and several reorganized subsidiaries, including "Reorganized PC Landing Corp.", the company will emerge from chapter 11 bankruptcy as a stand-alone entity continuing the operation of PC-1. It is expected that the PCL Debtors' pre-petition lenders will receive 100% of the equity in New PCL Bermuda, though additional unsecured creditors may potentially receive stock in New PCL Bermuda depending on the resolution of certain disputed pre-petition claims.

As the Reorganization Plan provides for the reorganization of PC Landing Corp. and results in a change of a controlling interest in the entity, the proposed transaction constitutes an assignment or transfer of PRC 8152.1 within the meaning of the Lease, for which Commission approval is required. Accordingly, the Commission's approval of the "assignment" of PRC 8152.1 from PC Landing Corp. to Reorganized PC Landing Corp. is being requested.

PROPOSED AMENDMENT:

To amend the terms of lease PRC 8152.1 as follows:

Rent Amendment

1) **Back Rent for Rental Years Commencing April 2004 and April 2005:** PC Landing has paid $12,500 monthly towards the 2004 rent and has a balance due, as of November 15, 2005, in the amount of $359,150 for the rental period of April 20, 2004 through April 20, 2006. PC Landing will continue paying $12,500 monthly until January 20, 2006. No further amount of past due rent will be due or payable as of January 20, 2006.

2) **Rent from January 20, 2006 thru April 19, 2010:** Commencing on January 20, 2006 and continuing monthly until March 20, 2006, PC Landing will pay prorated monthly rent based on the annual rent of $242,075 as provided for in PRC 8152.1. The rent due on April 20, 2006 and annually thereafter, will be paid as outlined in PRC 8152.1, until the expiration of the initial term on April 19, 2010. The annual rent due on April 20, 2006 and thereafter during the remainder of the initial term, may be paid, at PC Landing's option, in a single annual payment or in quarterly installments, plus interest. If rent is paid quarterly, payments will include interest that will be calculated based on the State of California Pooled Money Investment Account Earnings Yield Rate, Annual Yield, for the most recent calculated Fiscal Year (the "interest rate"). The Interest Rate will be adjusted annually. Commission staff will advise PC Landing 30 days prior to the annaiversary of PRC 8152.1 what the Interest Rate will be for the upcoming rental period.

3) The Commission waives its rights under Paragraph 5 of Section 2 and Paragraph 2(b) of Section 4 of PRC 8152.1 to review the annual rent under the initial term of PRC 8152.1, and PC Landing for itself and its successors in interest to PRC 8152.1, agrees not to seek further modification of the rental terms during the remainder of the initial term.

Cable Burial Verification Survey Amendment

The 2005 cable burial survey results indicate that the cable burial condition is substantially equal to or better than was indicated in the July 2003 survey. Therefore, the next survey, other than a survey required under PRC 8152.1 following an event that affects the cables, will be required eight years from the completion of the 2005 Survey. Subsequent periodic burial inspection surveys will be on that same eight-year schedule if the survey results indicate that the

cable burial is substantially equal to or better than the burial condition as indicated in the immediately preceding survey. However, if any survey conducted after the 2005 Survey indicates that cable burial is not substantially equal to or better than the immediately preceding survey, subsequent surveys will be conducted at three-year intervals.

PC Landing and the California Coastal Commission (CCC) have entered into a Stipulation Agreement, dated October 28, 2005, to settle certain claims and disputes between the parties. The agreement provides, among other things, that PC Landing may apply to amend the cable burial survey requirement currently outlined in the Coastal Development Permit (CDP No. E-98-027) to extend the interval between periodic burial inspections from its current interval of 18-24 months to five years. In order to coordinate PC Landing's periodic burial survey requirements under the Lease, with the burial survey requirements under the CDP, the proposed lease amendment further provides that, in the event PC Landing conducts a periodic burial verification survey pursuant to the CDP at a time earlier than a survey as required under the Lease, then that survey (Earlier Survey) will be deemed to be a periodic burial survey conducted under the Lease. In such event, the time in which PC Landing must conduct the next succeeding periodic burial verification survey will commence to run from the completion of the Earlier Survey. PC Landing will furnish all survey results concurrently to the CSLC and the CCC.

Burial Amendment

The terms of PRC 8152.1 requiring the cables to be buried from the duct ends to the 1,000-fathom water depth will be modified to allow the cables to remain in their "as-built" condition. The as-built conditions are reported in the Pacific Crossing (PC-1) July 2003 Cable Burial Verification Survey provided to the Commission on September 8, 2003.

Bond Amendment

By December 28, 2005, PC Landing will provide a bond (or other form of security reasonably acceptable to Commission staff) for 1/5th of the face amount of the bond currently required under PRC 8152.1. Commencing on April 20, 2006, and annually thereafter, PC Landing will increase the amount of the bond by an additional 1/5th, until the bond amount is in full compliance with the provisions of PRC 8152.1. Upon the sale of PC Landing to a third party, the amount of the bond will immediately revert to the face amount of the bond, which is $1,000,000.

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

Environmental Issues

As outlined in this Calendar Item, PC Landing operates, maintains, and uses two segments of the Pacific Crossing submarine cable system ("PC-1"). In 2000, the CSLC adopted a Mitigated Negative Declaration (MND) for the two submarine telecommunications cable systems, one proposed by PC Landing and a second by PAC Landing Corp (collectively Parties). The conclusions of the MND were based on the Parties project description that included that the cables would be buried out to the 1,000-fathom (ftm) bathymetric isobath (1,829 m/6,000 ft.). The PC-1 cables were installed between August 2000 and January 2001.

The PC-1 system consists of two segments of cable, PC-1 South and PC-1 East. Post-installation surveys indicate the PC-1 East and PC-1 South cables are buried 99% and 98% of their route length in the project area, respectively. Both cables are completely buried to a water depth of 1,100 meters (m) (3,606 ft./601 ftm), which was confirmed during the required burial verification survey conducted in June and July 2003. Areas of unburied and suspended cable in the project area, which includes out to the 1,000 fathom bathymetric isobath, are in water depths of 1,100-1,830 meters and located approximately 25 nautical miles (28.8 miles) offshore, in international waters.

PC-1 East Cable

Approximately 1.1 km (.68 miles) of cable lies on the surface along PC-1 East in the project area as reported by 2003 burial verification survey data. These sections are in water depths ranging from approximately 1,162 m (3,812 ft./635 ftm.) to 1,809 m (5,935 ft./989 ftm.) and, based on geomorphological data collected in 1998 and 2001, are in areas of semi-consolidated sediments, areas of textural variation, and rock. Visual observations from 2003 video records indicate these areas are of variable composition, including rock. The visual observations were also recorded in the GIS database and are coded on the 2003 survey charts.

A total of approximately 125 m (410 ft.) of cable is suspended above the seabed, in some instances where the cable is intermittently buried and on the surface. Sections of the cable suspended above the sea floor occur between approximately at 1,205 m (3,953 ft./659 ftm.) and 1,375 m (4,511 ft./751 ftm.) water depths. The maximum height of the suspension is 1.4 m (3.6 ft.) and it is located at a water depth of approximately 1,245 m (4,085 ft./681 ftm.).

PC-1 South Cable

Approximately 2.0 km (1.25 miles) of cable lie on the surface along PC-1 South in water depths ranging from approximately 1,173 m (3,848 ft./641 ftm.) to 1,804 m (5,919 ft./986 ftm.). Based on geomorphological data collected in 1999 and 2001, the sections of surface cable are in areas of semi-consolidated sediments, areas of textural variation, mixed clay/silt, and rock. On PC-1 South, a total of approximately 419 m (1,375 ft.) of cable is on the sea floor.

PC-1 South sections of cable suspended above the seabed occur between approximately 1,192 m (3,911 ft./652 ftm.) and 1,830 m (6,004 ft./1,001 ftm.) water depths. The maximum height off the seabed is approximately 8 m (26.25 ft.) and it is located at water depths between 1,778 m (5,833 ft./972 ftm.) and 1,804 m (5,919 ft./986 ftm.).

This proposed amendment raises issues of potential impacts in two subject areas, marine biology (specifically marine mammals), and conflicts with commercial fishing activities (specifically trawlers). Each of these issue areas is discussed and analyzed below.

Marine Biology Impacts

Marine biological resources may be affected in areas where water depths are greater than 1,100 m (601 fth) and where the cables are suspended above the sea floor. According to the analyses conducted for the MND, the species of concern at this depth is the sperm whale because it can dive and feed at depths of 1,200 m or greater. Also, sperm whales are believed to feed along the sea floor as well as in intermediate depths.

Of the 13 biological impacts identified in the Mitigated Negative Declaration (MND), Biological Resource Impact No. 7 is the sole impact dependent on the cable being buried along its entirety, as stipulated in PC Landing's application to the Commission:

- *MND Biological Impact No. 7, Class III: Possible entanglement of whales in exposed cable on the seafloor* – The MND considered the possibility of whales becoming entangled in exposed cable, which would result in the "take" of a listed species. The MND concluded that the impact did not rise above the significance criteria because interaction between whales and cables was unlikely, given known whale feeding behavior and the anticipation that the cable would be buried below the seabed.

Based on a 2003 memorandum by the National Marine Mammal Laboratory, the last recorded whale entanglement in a cable was in 1955, which predates the deployment and burial of fiber-optic cables. Present day fiber-optic cables are armored and relatively inflexible. In order to become entangled; 1) a sperm whale would have to make physical contact with a suspended section of cable; and 2) sufficient slack would need to be present in the suspended cable to render entanglement a possibility. In addition, the video records of surveys completed for the PC-1 cables in 2001, 2003, and 2005 do not indicate the presence of loops or excess slack in the suspensions.

The sperm whale's range extends from the equator to the Polar Regions. In California waters, one stock is recognized: the California/Oregon/Washington stock, which ranges from at least Baja California to Washington. Sperm whales are reportedly most abundant off central California from April through mid-June and from the end of August through mid-November, although they are found there year-round. The best estimate of the California/ Oregon/ Washington stock is 1,407. Sperm whales generally favor canyons, escarpments and deep basins. The area occupied by the suspended PC-1 South cable (approximately 419 m) and the area occupied by the suspended PC-1 East cable (approximately 125 m), relative to the sperm whales' extensive range is extremely small, which decreases the statistical probability for contact between the whales and the suspended sections of the cable.

Further, since the MND was written, there have been direct observations of mammal sightings recorded by mammal monitors during cable installations and inspection surveys in the general project area. Specifically, out of 89,383 animals observed during cable installations in the project area around the PC-1 cables from 2000 to 2003, six of those observations were sperm whale sightings.

Video footage of the PC-1 South suspensions was presented to Christina Fahy, a NOAA Fisheries staff person, in 2001. Her evaluation as provided to staff states: "Basically, sperm whales are found in that area off San Luis Obispo County. Although they can dive to the depths of the exposed underwater cables, it is not their typical dive depth. In addition, they do not bottom forage – they generally feed on squid, which are deep dwelling species, but sperm whales are more likely to find them in the mid to lower depths, not near the bottom. They do feed on octopus, however, which are more found in rocky habitat."

Conclusion
Therefore, based on the information available to staff, the suspensions do not pose a risk of significant adverse effect because; 1) interaction between whales and the PC-1 cables is unlikely; and 2) if such contact occurs, according to Ms. Fahy, "....the likelihood of a sperm whale entanglement with the cable is very remote..." because the suspended cables are taut rather than containing "loops" or "excess slack."

Commercial Fishing Impacts
Although the MND considered all gear types in the fishing impact analyses, trawling was considered to be the gear type with the greatest potential for contact with cables because it employs gear that is drawn close to or on the bottom and often penetrates the sea floor.

In anticipation of 100% burial of the PC-1 cables, as proposed by PC Landing, the MND concluded that potentially significant impacts to trawlers would not occur. However, the as-built conditions, based on ROV surveys completed for the project in 2001, 2003, and 2005, show that there are sections of the PC-1 cables that are exposed, and these areas represent a change in conditions from those upon which the MND conclusions were based. In particular, the physical factors are:

- *Cable on the surface* – 1.1 and 2.0 km on PC-1 East and South, respectively; and
- *Cable above the seabed* – 0.13 and 0.42 km on PC-1 East and South, respectively.

Of the three fishing impacts and 11 socioeconomic impacts identified in the MND, two of the impact conclusions are dependent on cable burial:

- *MND Fishing Impact No. 2, Class II: Economic loss to a fisherman or fishery from interaction with a submarine cable* – The MND considered the potential for economic loss to a fisherman if his or her gear snagged a cable, and concluded the impact could be significant if left unmitigated. With mitigation, the impact was determined to be non-significant (Class II) on the basis of the reduced potential for gear snags and compensation measures that would mitigate economic loss if gear were lost despite avoidance measures. Cable burial was one element influencing the non-significant determination.

- MND Socioeconomic Impact No. 5, Class III: Potential for project operation to have a long-term adverse effect on the commercial fishing industry's contribution to the local economy – The MND evaluated the potential effects of the project (which also included the PAC cable) on the contribution of commercial fishing to the local economy. The assessment addressed potential effects on commercial fishing, fishing-dependent industry, and fiscal effects on the local ports. The Class III impact (adverse but not exceeding the significance criteria) determination was based on a conclusion that there would be no significant effect on an individual fisherman or fishing-dependent industry because of compensation measures, no reduction in project area fishing grounds since fishermen could fish over the buried cables, and the absence of any resulting significant fiscal effect on the local ports.

Trawlers typically tow or "drag" their gear on the bottom along contours, targeting species by water depth and other factors. Anecdotal information from commercial fishing representatives who observed the PC-1 burial inspection surveys in 2003 generally indicate the outer range of trawl depth in the area is 910 to 1,100 m (approximately 500 to 600 fth). Information obtained by PC Landing representatives from fishermen about tow patterns and depths correspond with observations logged during the 2003 burial verification survey. The trawl scars, which were observed via side scan sonar and logged by the survey crew into the GIS database, are also consistent with the reported tow patterns (where tows cross the cables) and depths. The maximum tow depth estimates are otherwise unconfirmed, although they are consistent with the absence of trawl scars in deeper water recorded during the 2003 burial verification survey.

No fishing vessel logbooks were reviewed; however, PC Landing provided information in their application to CSLC based on discussions between their representatives and local fishermen, which note that none of local trawlers are known to have gear set up for trawling beyond 1,189 m (650 fth), although three or four vessels are capable of towing at those depths. This information suggests a few vessels (three to four) in the local fleet are gear capable of fishing at depths near the exposed cable, but do not presently have the gear set up to do so. Operating costs increase with depth, particularly fuel costs, which is another factor that may inhibit fishing effort at these depths.

Fisheries Liaison Committee

PC Landing's involvement with the Joint Cable/Fisheries Liaison Committee (JCFLC) was initiated under the "Interim Agreement" cited in the MND, and PC Landing is now a member of the JCFLC established between the fishermen and the other cable operators in the area. In contrast to the Interim Agreement, the agreement with the JCFLC accommodates unburied cable, and provides for avoidance in areas where cable is identified as being exposed. PC Landing stated in their application to the CSLC that the JCFLC does not regard the continued presence of exposed or suspended cable to create the potential for an uncompensated economic "loss," especially in excess of the five percent significance threshold. There is no proposed preclusion by PC Landing, and the present lease conditions provide for mitigating economic loss resulting from gear loss and associated lost time, should that occur. These safeguards will remain in place to avoid uncompensated losses from gear interaction during the project's life.

The JCFLC serves as a means of communication between cable operators and local fishermen, and also a means of collecting, administering, and dispersing funds contributed by the cable operators. The committee's Board of Directors consists of fishermen and cable operators, and the committee is organized to represent all gear types used by area fishermen.

The main purpose of cable burial is to prevent contact between the cables and other users of the seabed. PC Landing's continuing membership on the JCFLC provides an ongoing means of monitoring and circulating information of cable conditions and fishing activity in the project area. The present agreement acknowledges there are areas of unburied cable, and cautions fishermen to avoid such areas. Should future fishing patterns shift to areas where the PC-1 cables are exposed, the provisions of the agreement regarding avoidance of the exposed areas would prevail.

Last, by letter received December 1, 2005, the JCFLC states, in part, "Pacific Crossing has provided the Committee and its fishing members with nautical charts and other information showing the location of its cables including unburied and suspended portions of the cable as well as a copy (electronically) of its amendment application. Based on our review of this information, we do not believe that the proposed amendment will have an adverse impact on commercial fishermen operating in the Morro Bay and Port San Luis areas, and therefore support the proposed amendment."

Updated Regulations/Restrictions
As noted in the MND, NOAA Fisheries, the Pacific Fisheries Management Council (PFMC), and the CDFG regulate commercial fishing in California's coastal waters. There exists the potential to change commercial fishing rules in such a manner that would further reduce the potential for conflict between trawl gear and the exposed portions of the cables. In June 2005, the PFMC, the federal agency responsible for regulating commercial fisheries, agreed to prohibit trawling in water depths greater than 700 fathoms (4,200 ft.) offshore California, Oregon and Washington. This change is to be implemented through a new rule, scheduled for proposed release in 2006.

Conclusion
Therefore, based on the information available to staff, including the above quoted correspondence from the JCFLC, neither the unburied portions nor the suspensions of the cables pose a risk of any significant adverse effect to commercial fishermen because: 1) area fishermen do not currently trawl in water depths greater than 650 fathoms; 2) the JCFLC agreement acknowledges exposed cable segments and cautions fishermen to avoid such areas, and, in addition, in the event a cable snag is positively identified, the Mitigation Monitoring Plan adopted by the Commission requires that PC Landing will promptly compensate the fishermen 150% of the replacement cost of the lost gear; and 3) restrictions likely to be imposed by the PFMC will prohibit trawling offshore California in water depths greater than 700 fathoms.

OTHER PERTINENT INFORMATION:

1. Applicant has the right to use the uplands adjoining the lease premises.

2. **Assignment of Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

   Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

3. **Amendment of Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is

exempt from the requirements of the CEQA under the general rule that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes, based on the information available to it, that there is no possibility that this project may have a significant effect on the environment.

Authority: Title 14, California Code of Regulations, section 15061 (b)(3).

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq., but such activity will not affect those significant lands.

EXHIBITS:

A. Site and Location Map
B. Settlement Agreement
C. Lease Amendment

PERMIT STREAMLINING ACT DEADLINE:

N/A (CSLC acting as lead agency under the CEQA)

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

ASSIGNMENT OF LEASE: FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

LEASE AMENDMENT: FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 (b) (3).

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY WILL INVOLVE LANDS IDENTIFIED AS POSSESSING SIGNIFICANT ENVIRONMENTAL VALUES PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ., BUT THAT SUCH ACTIVITY WILL HAVE NO DIRECT OR INDIRECT EFFECT ON THOSE RESOURCES FOR WHICH SUCH LANDS ARE IDENTIFIED.

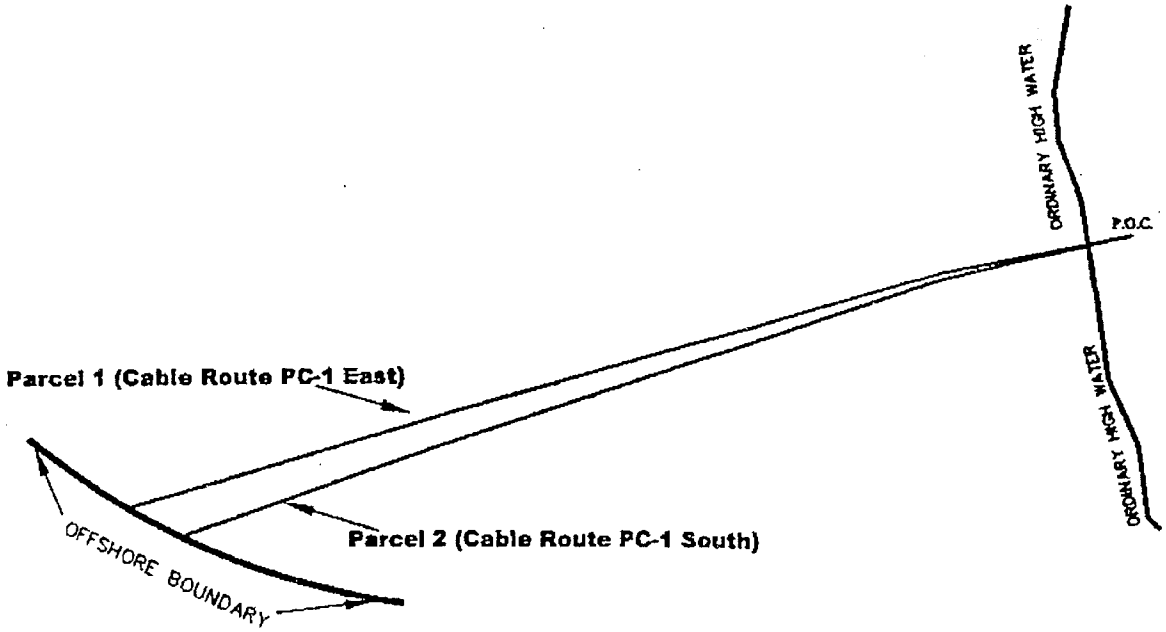
AUTHORIZATION:

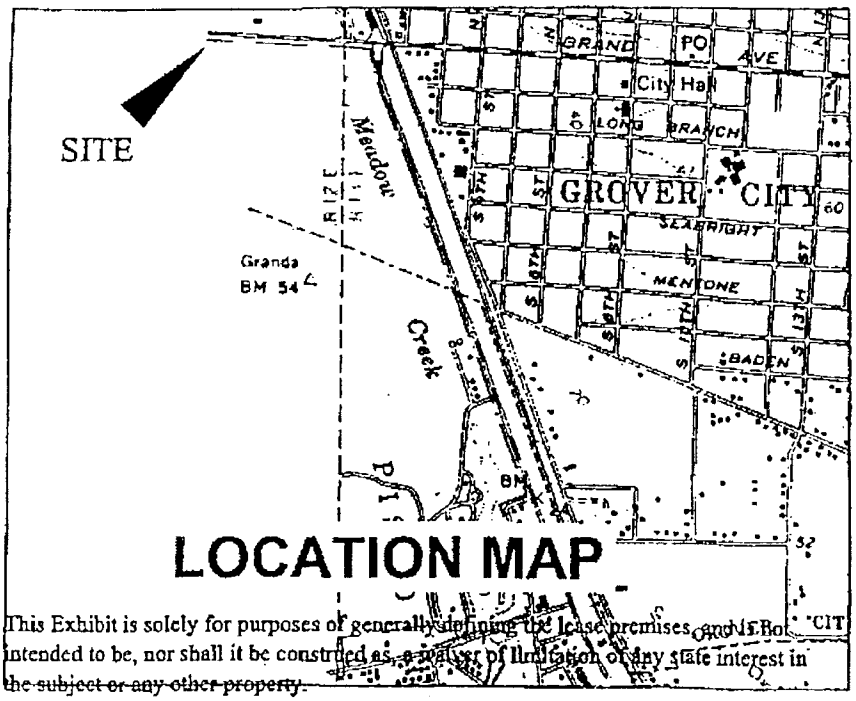
1. APPROVE THE ASSIGNMENT OF PRC 8152.1 FROM PC LANDING CORP. TO REORGANIZED PC LANDING CORP, IN ACCORDANCE WITH THE REORGANIZATION PLAN APPROVED BY THE US BANKRUPTCY COURT ON NOVEMBER 10, 2005, IN RE PC LANDING CORP., ET AL, CASE NO. 02-12086 (PJW); AND

2. AUTHORIZE THE AMENDMENT OF LEASE NO. PRC 8152.1, A GENERAL LEASE - RIGHT OF WAY USE, OF LANDS SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, EFFECTIVE DECEMBER 8, 2005, TO AMEND LEASE PRC 8152.1 ON THE TERMS AND CONDITIONS OUTLINED IN THIS CALENDAR ITEM AND SUBSTANTIVELY IN THE FORM ATTACHED AS EXHBIT C. ALL OTHER TERMS AND CONDTIONS OF THE LEASE WILL REMAIN IN EFFECT WITHOUT AMENDMENT.

NO SCALE

SITE MAP



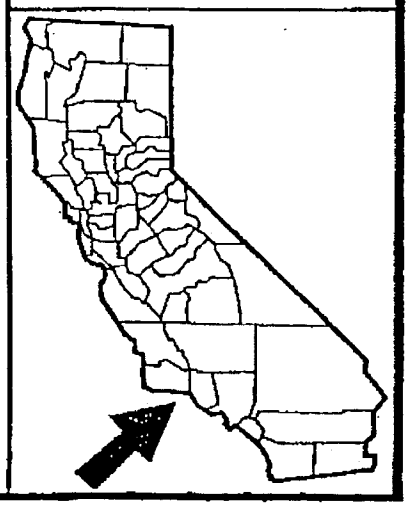


LOCATION MAP

This Exhibit is solely for purposes of generally defining the lease premises, and is not intended to be, nor shall it be construed as, a waiver of limitation of any state interest in the subject or any other property.

EXHIBIT A
PRC 8152.1

GROVER BEACH
SAN LUIS OBISPO



BD 11/29/05

EXHIBIT B
PRC 8152.1

Execution Version

SETTLEMENT AGREEMENT

This Settlement Agreement (the "**Settlement Agreement**") is entered into as of August 26, 2005, by and between (a) Pacific Crossing, Ltd. and PC Landing Corp. (collectively, PCL) and (b) the California State Lands Commission ("**CSLC**" or the "**Commission**") (each a "**Party**" and together the "**Parties**").

RECITALS

WHEREAS, PCL and certain affiliates own and operate a telecommunications network that links Japan to the United States consisting of a 13,076 route-mile submarine fiber optic cable ("**PC-1**") running between two points in Japan and two cable landing stations on the western coast of the United States located in Grover Beach, California and in Mukilteo, Washington;

WHEREAS, PC Landing Corp. and the State of California, acting through CSLC, are parties to Lease PRC 8152.1 ("**PRC 8152.1**"), authorized by CSLC on April 20, 2000, pursuant to which PC Landing Corp. is granted use of certain submerged lands adjacent to Pismo State Beach, San Luis Obispo County, California as a General Lease-Non-Exclusive Right-of-Way Use in connection with the construction, installation, operation, maintenance and use of two segments of PC-1;

WHEREAS, on July 19, 2002, PCL and certain affiliates filed petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), in the cases captioned *In re PC Landing Corp., et al.*, Case Nos. 02-12086 through 02-12091 (PJW) (the "**Bankruptcy Case**");

WHEREAS certain disputes have arisen between PC Landing Corp. and CSLC regarding: (A) PC Landing Corp.'s performance and obligations under provisions of PRC 8152.1 requiring: (1) PC Landing Corp.'s annual payment of rent in the amount of $242,075 in April of each year; (2) that PC-1 be completely buried from the duct ends to the 1,000 fathom isobath; (3) that PC Landing Corp. conduct cable burial verification surveys at intervals of 18 to 24 months for the first five years with subsequent frequency to be determined; and (4) that PC Landing Corp. have a surety bond or other security in the amount of $1,000,000; and (B) whether PRC 8152.1 is a non-residential real estate lease under Section 365 of the Bankruptcy Code and whether PC Landing Corp. automatically rejected PRC 8152.1 by inadvertently failing to include PRC 8152.1 in an exhibit to a motion to assume or reject PRC 8152.1 (collectively, the matters specified in (A) and (B) hereof, the "**Disputes**");

WHEREAS, PCL and CSLC desire to establish certain terms, conditions and procedures, which if timely carried out and provided required approvals are obtained, will result in the amicable resolution of the Disputes and all outstanding issues between the Parties, which in turn will achieve certainty for the Parties, preserve PRC 8152.1 for PC

Landing Corp. and its successors, provide for the amendment of PRC 8152.1 on the terms set forth herein, provide for appropriate environmental analysis of the proposed amendment to PRC 8152.1, and provide revenue for the State of California.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Conditional Assumption of PRC 8152.1.

(a) PCL will file a motion (the **"Assumption Motion"**) with the Bankruptcy Court under Bankruptcy Code section 365 and Bankruptcy Rule 9019 for an order authorizing PC Landing Corp. to assume PRC 8152.1 and settle and compromise its disputes with CSLC on the terms and conditions set forth in this Settlement Agreement. The Assumption Motion shall be filed within ten (10) days of the execution of the Settlement Agreement, and PCL shall seek Bankruptcy Court approval of the Assumption Motion at the earliest date practicable. The assumption of PRC 8152.1 and the compromises and any releases and waivers in connection therewith and herewith, are conditioned upon: (1) the approval of the Assumption Motion by the Bankruptcy Court on or before September 30, 2005; and (2) CSLC approval of each of the following on or before October 31, 2005, or December 15, 2005 if the date for the CSLC Approvals is extended under paragraph 5(a), hereof: (a) the Burial Amendment; (b) the Rent Amendment; and (c) the Survey Amendment (collectively, the **"CSLC Approvals"**) and will become effective on the first day that is ten (10) business days following receipt of the CSLC Approvals.

(b) PC Landing Corp. shall submit an application (the **"Application"**) to the CSLC for Commission consideration of the proposed amendments to PRC 8152.1 constituting the CSLC Approvals, which, if in conformance with this Settlement Agreement, and any applicable conditions hereof, shall be recommended for approval by CSLC staff. The terms of the proposed amendment shall be in conformity with Paragraphs 2 (Rent Amendment), Paragraph 3 (Survey Amendment) and Paragraph 4 (Burial Amendment) of this Settlement Agreement. The Application shall be submitted not later than 30 days following the execution of the Settlement Agreement. The ultimate determination of whether or not to grant the CSLC Approvals shall be in the sole discretion of the Commission, to be exercised at such time in the future as the proposed amendments are presented by CSLC staff in accordance with the provisions of this Settlement Agreement for Commission consideration at a public meeting. Nothing contained in this Settlement Agreement is intended, nor should be construed, to commit or otherwise obligate the Commission to grant the CSLC Approvals, provided that if the CSLC Approvals are not granted in the manner or in the time provided for in this Settlement Agreement PCL

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shall have the right to terminate this Settlement Agreement as provided herein.

(c) The hearing on the pending motion to correct Exhibit A to Debtors' motion for order under 11 U.S.C. § 365(d)(4) involving PRC 8152.1 ("**Motion to Correct**") shall be continued pending receipt of the CSLC Approvals, and upon receipt of the CSLC Approvals, CSLC shall consent to the granting of the Motion to Correct. In the event the CSLC Approvals are not received on or before October 31, 2005, or December 15, 2005 if the date for the CSLC Approvals is extended under paragraph 5(a), hereof, the hearing on the Motion to Correct shall be set for the next available omnibus hearing of the Bankruptcy Court or such other hearing date as the Parties shall mutually agree.

(d) For so long as this Settlement Agreement is in effect and PCL is complying with its obligations hereunder, and provided that CSLC has not acted to deny the Application, CSLC agrees that it will not oppose confirmation of PCL's Plan of Reorganization (the "**Plan**") and the vesting of PRC 8152.1 in the reorganized PC Landing Corp. pursuant to the Plan, or any amended plan of reorganization that is consistent with the Settlement Agreement, and PCL may so advise the Bankruptcy Court; provided that the foregoing shall not be construed to extend or otherwise toll CSLC's time to object to confirmation of the Plan before the Bankruptcy Court.

(e) Effective upon the date assumption of PRC 8152.1 becomes effective under Paragraph (1)(a), PCL waives both: (i) any and all rights to challenge the legal validity of PRC 8152.1, or any of its provisions (including the rental amount for the initial term, as modified by the Settlement Agreement), whether before the Bankruptcy Court, any court of competent jurisdiction, or any administrative agency, and (ii) any argument that PRC 8152.1 is not subject to the provisions of Section 365 of the Bankruptcy Code as an unexpired lease of nonresidential real property. In the event that the assumption of PRC 8152.1 does not become effective under Paragraph 1(a), the Bankruptcy Court retains jurisdiction to hear and consider arguments regarding the nature of PRC 8152.1 and all Parties' bankruptcy and non-bankruptcy rights regarding PRC 8152.1 and the obligations thereunder, and all arguments regarding jurisdiction and sovereign immunity are preserved. Nothing contained in the Settlement Agreement shall confer upon the Bankruptcy Court greater jurisdiction over the subject matter of PRC 8152.1 or the Parties than would exist in absence of the Settlement Agreement.

2. **Terms of Proposed Rent Amendment.**

(a) **Back rent for Rental Years Commencing April 2004 and April 2005**

(i) Since February 23, 2005, PC Landing Corp. has paid $12,500 monthly towards its 2004 rent, and has a current balance due as of July 14, 2005 of $409,140 for rental years commencing April 2004 and April 2005 (the "**Back Rent**"). PC Landing Corp. will continue to make monthly installments at the rate of $12,500 until the earlier of the following: (a) the 20th of the month following the receipt of the CSLC Approvals or, April 20, 2006 (the "**Rental Adjustment Date**").

(ii) In connection with the Assumption Motion, PC Landing Corp. will seek authority to compromise and settle the balance of the Back Rent such that no further amount of Back Rent shall be due or payable as of the Rental Adjustment Date, provided however, rent at the rate provided in PRC 8152.1 shall accrue from and after the Rental Adjustment Date as provided in Paragraph 2(b) below.

(b) **Rent going forward.** Commencing on the Rental Adjustment Date and continuing monthly until March 20, 2006, PC Landing Corp. shall pay pro rated monthly rent based on the annual rent provided in PRC 8152.1. The rent due on April 20, 2006 (the "**Annual Rent**") and annually thereafter shall be payable in accordance with the terms of PRC 8152.1, until expiration of the initial term (4/00-4/10) of PRC 8152.1. The Annual Rent due on April 20, 2006 and thereafter during the remainder of the initial term, may be paid, at PC Landing Corp.'s option, in a single annual payment or in quarterly installments, plus interest. If rent is paid quarterly, payments shall include interest that will be calculated based on the State of California Pooled Money Investment Account Earnings Yield Rate, Annual Yield, for the most recent calculated Fiscal Year (the "**Interest Rate**"). The Interest Rate shall be adjusted annually for the succeeding years on the anniversary of the Rent Adjustment Date. CSLC shall advise PC Landing Corp. thirty (30) days prior to the anniversary of PRC 8152.1 what the Interest Rate will be for the upcoming rental period.

(c) Effective upon the date assumption of PRC 8152.1 becomes effective under Paragraph 1(a), CSLC waives it rights under Paragraph 5 of Section 2 and Paragraph 2(b) of Section 4 of PRC 8152.1 to review the Annual Rent under the initial term of PRC 8152.1, and PC Landing Corp., for itself and its successors in interest to PRC 8152.1, agrees not to seek further modification of the rental terms during the remainder of the initial term.

3. **Terms of Proposed Survey Amendment.**

(a) PC Landing Corp. will conduct a second post-burial verification survey

commencing on or before August 31, 2005 (the "**2005 Survey**"), unless for reasons beyond PC Landing Corp.'s reasonable control, the survey cannot be commenced by that date; provided however, PC Landing Corp. shall use its best efforts to have the 2005 Survey completed and results presented to CSLC on or before October 7, 2005, and submission of such results is necessary for CSLC consideration of the CSLC Approvals as set forth in paragraph 5(c), and will be a condition of the CSLC Approvals.

(b) If the survey results for the 2005 Survey indicate that the cable burial condition is substantially equal to or better, as that criteria is to be further defined by the CSLC and PCL, than was indicated in the July 2003 survey, the next survey, other than a survey required under PRC 8152.1 following an event that affects the cable, will be required 8 years from the completion of the 2005 Survey. Subsequent surveys will be on that same schedule if the first 8-year survey results indicate that the cable burial is substantially equal to or better than the burial condition as indicated in the 2003 Survey.

(c) In the event that the survey results of the 2005 Survey indicate that the cable burial condition is not substantially equal to or better than was indicated in the July 2003 survey, the next survey, other than a survey required under PRC 8152.1 following an event that affects the cable, will be required 3 years from the completion of the 2005 Survey. Subsequent surveys will be on an 8 year schedule if the survey following the 2005 Survey indicates that the cable burial is substantially equal to or better than the burial condition as indicated in the 2003 Survey. If the 2005 Survey, or any survey conducted thereafter indicates that cable burial is not substantially equal to or better than the 2003 Survey, subsequent surveys shall be performed at 3 year intervals.

4. **Proposed Terms and Environmental Process for Burial Amendment.**

(a) The Burial Amendment component of the Application will seek to amend PRC 8152.1 to authorize the cable to remain in its "as built" condition.

(b) CSLC staff shall prepare a calendar item recommending Commission approval of the Burial Amendment based on existing supporting documentation provided by PC Landing Corp., as verified by CSLC staff, and such further data and information as may be received by staff from independent sources, exempting the lease amendment action from the CEQA on the basis of § 15061(b)(3) of the CEQA Guidelines, or such other provision of the CEQA Guidelines as the Staff may rely on. CSLC staff may seek, from PCL or third parties, such additional documentation that it reasonably concludes is necessary to support its determination.

(c) In the event that credible scientific information is discovered, not

previously known to staff or disclosed to CSLC staff by PCL, presenting a fair argument that there are potential significant impacts on the environment from the current burial condition of the cable, then staff may decline to proceed as provided in this Section 4(b), and shall so notify PC Landing Corp., which shall be given an opportunity to be heard by CSLC staff on the issue. In that event, PC Landing Corp. may, at its option, proceed with consideration of the proposed Burial Amendment utilizing CEQA processing as determined to be appropriate by CSLC staff under the provisions of CEQA in consultation with PC Landing Corp., or terminate the Settlement Agreement and the Settlement Agreement shall be of no force and effect unless modified by mutual agreement of the Parties. Nothing contained in the Settlement Agreement is intended to impose any obligations upon the CSLC that are inconsistent with its obligations under the CEQA.

5. **Commission Consideration of Approvals.**

(a) **Commission Meeting.** Staff shall seek to schedule an agenda item for Commission consideration of the Rent Amendment, the Survey Amendment, and the Burial Amendment, and any Commission approval provided in PRC 8152.1 for consummation of the Plan (the "**Agenda Item**") at the earliest practicable Commission meeting, but in no event later than the Commission meeting scheduled for October 2005, which date shall be extended if PCL fails to timely provide the CSLC with all information reasonably required by CSLC to process PC Landing Corp.'s application. In the event that PC Landing Corp. is unable to have the 2005 Survey completed and results presented to the CSLC on or before October 7, 2005, CSLC staff may, at their option, schedule the Agenda Item for Commission consideration at the first Commission meeting that is 20 days or more after the submission of the 2005 Survey results to the CSLC; provided that, in such event, and subject to the limitations of paragraph 1(c), CSLC will not object to consummation of the Plan and to the vesting of PRC 8152.1 in the reorganized PC Landing Corp. pursuant to the Plan prior to CSLC Approvals being obtained. In the event that the CSLC Approvals are not obtained by December 15, 2005, and provided PC Landing Corp. has submitted the 2005 Survey results not later than November 15, 2005, PCL may, at its option, terminate the Settlement Agreement, and the Settlement Agreement shall be of no force and effect unless modified by mutual agreement of the Parties. If for any reason, the CSLC Approvals are not obtained by April 1, 2006, either party may terminate the Settlement Agreement, and the Settlement Agreement shall be of no force and effect unless modified by mutual agreement of the Parties.

(b) **Further Assurances.** PCL shall cooperate with CSLC staff in providing additional documentation or information reasonably required to facilitate

the CSLC Approvals.

(c) **Staff Fees.** Staff fees for processing the Application, including environmental documentation cost ("**Staff Fees**") will be paid by PC Landing Corp. A reasonable estimate of the Staff Fees will be provided to PCL prior to execution of the Settlement Agreement, and shall be included in the Settlement Agreement. Such payments shall be in addition to rental payments and shall be paid in equal monthly installments (adjusted as necessary where actual fees and costs differ from projected amounts), as invoiced by the CSLC, based on the number of months necessary for the processing and consideration of the Application.

6. **Surety Bond.** Within 20 days of the later of the effective date of PCL's Plan or of the effective date of the assumption of PRC 8152.1 under paragraph 1(a), PC Landing Corp. shall provide a bond (or other form of security reasonably acceptable to the CSLC staff) for 1/5 of the face amount of the bond currently required under PRC 8152.1. Commencing on April 20, 2006, and annually thereafter, PC Landing Corp. shall increase the amount of the bond by an additional 1/5, until the bond amount is in full compliance with the provisions of PRC 8152.1. Upon sale of PC-1 to a third party, the amount of the bond shall revert to the face amount of the bond under PRC 8152.1.

7. **Notice to California Coastal Commission.** CSLC staff shall advise the California Coastal Commission of the Settlement Agreement and of CSLC staff's support for the resolution of the matters covered by the Settlement Agreement.

8. **Required Approvals.** This Settlement Agreement is conditioned on (1) the entry of an order by the Bankruptcy Court approving the Assumption Motion and (2) the granting by the Commission of the CSLC Approvals. If either of these conditions fail, or are not timely fulfilled, the provisions of this Settlement Agreement shall no longer be binding upon the Parties.

9. **No Admission of Liability.** This Settlement Agreement is not an admission of any liability by any of the Parties but is a compromise, and this Settlement Agreement shall not be treated as an admission of liability. All communications (whether oral or in writing) between and among the Parties, their counsel and/or their respective representatives relating to, concerning or in connection with this Settlement Agreement or the matters covered hereby and thereby, shall be governed and protected in accordance with Federal Rule of Evidence 408 and Section 1152 of the California Evidence Code to the fullest extent permitted by law.

10. **Warranties.**

(a) **Warranty of Mutual Understanding.** The Parties warrant and represent that they have read this Settlement Agreement and that they have had a full opportunity to have, and/or have had, the terms used herein and the

consequences hereof explained to them by their respective attorneys; that each is legally competent to execute this Settlement Agreement and accept full responsibility therefor; and has the authority to do so.

(b) **Warranty of Performance.** Each of the Parties agrees promptly to carry out and execute its responsibilities under the terms of this Settlement Agreement and to execute any and all documents and do all things that may be necessary from time to time in the future to implement the terms of this Settlement Agreement and for the Parties to obtain the benefits thereof.

(c) **Warranty of Right and Authority.** Each of the Parties to this Settlement Agreement expressly acknowledges that the execution, delivery and performance of this Settlement Agreement (a) are within its powers, (b) have been duly authorized by all necessary action on its behalf and all necessary consents or approvals have been obtained and are in full force and effect (subject to approval of the Assumption Motion and obtaining the CSLC Approvals) and (c) do not violate any of the terms and conditions of (i) its governing documents, and (ii) any Applicable Law. For purposes of this Settlement Agreement, "**Applicable Law**" means all existing laws, rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders, decrees, licenses and concessions or any interpretations by, any governmental authority that are applicable to the relevant party and the transactions contemplated by this Settlement Agreement. The Parties further warrant that the person(s) signing on their behalf is (are) duly authorized by appropriate corporate or other action to sign the agreement and bind their respective entities to it.

11. <u>General Provisions.</u>

(a) **Incorporation of Recitals.** The Recitals set forth at the beginning of this Settlement Agreement are affirmed by the Parties hereto, and are acknowledged by the Parties to be true and correct and are hereby incorporated into the body of this Settlement Agreement as if fully set forth herein.

(b) **Modification Must Be In Writing.** This Settlement Agreement may not be altered, amended, or modified, except in a writing that is executed by duly authorized representatives of the Parties.

(c) **Extension of Deadlines.** The Parties, by mutual written agreement of their respective delegees, may extend any date provided in the Settlement Agreement without further order of the Bankruptcy Court.

(d) **Construction.** This Settlement Agreement has been negotiated with the intent that each of the terms and conditions contained herein are material

to the agreement, will be valid and enforceable. Should any paragraph, clause or provision of this Settlement Agreement be construed by a court of competent jurisdiction to be against public policy or to be void, invalid or unenforceable, and upon such determination becoming final, the Parties shall promptly meet and confer (the "**Conference**") as to whether they wish to terminate the Settlement Agreement or continue it in effect as to its enforceable terms. At the conclusion of the Conference, any Party that does not desire to maintain the Settlement Agreement in effect without the benefit of the void, invalid or unenforceable paragraph, clause or provision, may terminate the Settlement Agreement upon written notification to the other Parties within 30 days of the conclusion of the Conference. Termination of the Settlement Agreement shall relieve all Parties of their obligations under the agreement.

(e) **Governing Law.** This Settlement Agreement and the rights and duties of the Parties hereunder will be governed by and construed, enforced and performed in accordance with the law of the State of California, without giving effect to principles of conflicts of laws that would require the application of laws of another jurisdiction. Subject to the conditions in paragraph 1(e) hereof, the parties acknowledge and agree that the Bankruptcy Court shall have non-exclusive jurisdiction over this Settlement Agreement and any claims relating to its interpretation or enforcement.

(f) **Subject Headings.** Subject headings used in this Settlement Agreement are for convenience only. The singular shall include the plural and the masculine shall include the feminine and neuter genders.

(g) **Entire Agreement.** This Settlement Agreement sets forth the entire agreement among the Parties and supersedes their prior agreements, negotiations or understandings as to the subject matters set forth in this Settlement Agreement. Each of the Parties acknowledges and agrees that no other party, nor agent, nor attorney of any of the Parties has made any promise, representation or warranty, express or implied, not set forth in this Settlement Agreement. Each party signing this Settlement Agreement acknowledges that such party has not executed this Settlement Agreement on reliance on any promise, representation, conduct or warranty of any other party not expressly set forth in this Settlement Agreement.

(h) **Waiver of Presumptions.** The Parties hereby waive the presumption that any ambiguities in a contract are read against the drafter of same. The Parties further agree that this Settlement Agreement was negotiated by the Parties and that each of them is the drafter of every part of this Settlement Agreement.

(i) **Notices.** All notices or other communications which are required or permitted herein (other than remittance of payment) shall be in writing and sufficient if delivered personally, sent by facsimile or email transmission followed by another form of written notification which is capable of providing proof of delivery, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to CLSC

California State Lands Commission
100 Howe Avenue
Suite 100-South
Sacramento, CA 95825-8202
Attn: Barbara Dugal
Email: dugalb@slc.ca.gov
Fax: (916) 574-1835

with a copy to:

California State Lands Commission
100 Howe Avenue
Suite 100-South
Sacramento, CA 95825-8202
Attn: Richard D. Nobles, Esq.
Email: noblesr@slc.ca.gov
Fax: (916) 574-1855

If to PCL:

Pacific Crossing Ltd.
5956 Sherry Lane, Suite 1000
Dallas, Texas 75225
Attn: Vice President
Email: johno@cxoco.com
Fax: (214) 451-6999

with a copy to:

Martin L. Stern
Preston Gates Ellis & Rouvelas Meeds LLP
1735 New York Avenue, NW
Suite 500
Washington, DC 20006
Email: mstern@prestongates.com
Fax: 202-331-1024

or at such other address as the Party to whom notice is to be given may have furnished to the other Party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered personally, on the same day as facsimile or email transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday), on the business day after dispatch if sent by overnight air courier, or on the third business day after posting if sent by mail.

(i) **No Third Party Beneficiaries.** Nothing in this Settlement Agreement is intended to provide any legal rights to anyone not a party hereto.

(j) **Binding Effect on Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of PCL, CSLC and each of their respective successors and assigns, including, without limitation, the reorganized Debtors, any liquidating trust or trustee, disbursing agent or similar representative appointed in connection with the Bankruptcy Case or any chapter 11 plan for PCL, and any subsequently appointed chapter 11 or chapter 7 trustee for PCL. This Settlement Agreement shall not be assigned by any party, except to affiliates or to any person or entity that may purchase all or substantially all of PCL's assets, without the express written consent of any other party, which consent shall not unreasonably be withheld, delayed or conditioned.

(k) **Execution in Counterparts.** This Settlement Agreement may be signed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. This Settlement Agreement may be signed by the delivery of a signature by facsimile, and any signature delivered by facsimile shall have the same effect as any original signature.

IN WITNESS WHEREOF, the Parties have signed this Settlement Agreement as of the date and year set forth above.

CALIFORNIA STATE LANDS COMMISSION

By:
Name: Paul D. Thayer
Title: Executive Officer

PACIFIC CROSSING LTD.

By:
Name:
Title:

PC LANDING CORP.

By:
Name:
Title:

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IN WITNESS WHEREOF, the Parties have signed this Settlement Agreement as of the date and year set forth above.

CALIFORNIA STATE LANDS COMMISSION
By:
Name:
Title:

PACIFIC CROSSING LTD.
By: [signature]
Name: A. Katherstein
Title: V. President

PC LANDING CORP.
By: [signature]
Name: A. Katherstein
Title: V. President

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EXHIBIT C
PRC 8152.1

FIRST AMENDMENT OF RIGHT OF WAY LEASE PRC 8152.1

This First Amendment of Right of Way Lease is entered into as of December 8, 2005, by and between PC Landing Corp. (PC Landing) and the California State Lands Commission (**"CSLC"** or the **"Commission"**) (each a **"Party"** and together the **"Parties"**).

RECITALS

WHEREAS, PC Landing and certain affiliates own and operate a telecommunications network that links Japan to the United States consisting of a 13,076 route-mile submarine fiber optic cable (**"PC-1"**) running between two points in Japan and two cable landing stations on the western coast of the United States located in Grover Beach, California and in Mukilteo, Washington;

WHEREAS, PC Landing and the State of California, acting through the CSLC, are parties to Lease PRC 8152.1 (**"PRC 8152.1"**), authorized by the CSLC on April 20, 2000, pursuant to which PC Landing is granted use of certain submerged lands adjacent to Pismo State Beach, San Luis Obispo County, California as a General Lease-Non-Exclusive Right-of-Way Use in connection with the construction, installation, operation, maintenance and use of two segments of PC-1;

WHEREAS, on July 19, 2002, PC Landing and certain affiliates filed petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the **"Bankruptcy Code"**), in the United States Bankruptcy Court for the District of Delaware (the **"Bankruptcy Court"**), in the cases captioned *In re PC Landing Corp., et al.*, Case Nos. 02-12086 through 02-12091 (PJW) (the **"Bankruptcy Case"**);

WHEREAS, On November 10, 2005, the Bankruptcy Court confirmed the *Second Amended Joint Plan of Reorganization of PC Landing Corp., Pacific Crossing, Ltd., and their Debtor Affiliates, as Modified* (the "Plan"), which provides for an internal reorganization of PC Landing and its affiliates that will allow their emergence from chapter 11 on a stand-alone basis on the effective date of the Plan (the "Effective Date");

WHEREAS, certain disputes have arisen between PC Landing and CSLC regarding: (A) PC Landing's performance and obligations under provisions of PRC 8152.1 requiring: (1) PC Landing's annual payment of rent in the amount of $242,075 in April of each lease year; (2) that PC-1 be completely buried from the duct ends to the 1,000 fathom isobath; (3) that PC Landing conduct cable burial verification surveys at intervals of 18 to 24 months for the first five years with subsequent frequency to be determined; and (4) that PC Landing have a surety bond or other security in the amount of $1,000,000; and (B) whether PRC 8152.1 is a non-residential real estate lease under Section 365 of the Bankruptcy Code and whether PC Landing automatically rejected PRC 8152.1 by inadvertently failing to include PRC 8152.1 in an exhibit to a motion to assume or reject PRC 8152.1 (collectively, the matters specified in (A) and (B) hereof, the **"Disputes"**);

WHEREAS, PC Landing, its parent, Pacific Crossing Ltd., and CSLC entered into that certain Settlement Agreement, dated August 26, 2005, (the Settlement Agreement) that established certain terms, conditions and procedures, which if timely

carried out and provided required approvals were obtained, would result in the amicable resolution of the Disputes and all outstanding issues between the Parties, which in turn will achieve certainty for the Parties, preserve PRC 8152.1 for PC Landing Corp. and its successors, provide for the amendment of PRC 8152.1 on the terms set forth in the Settlement Agreement, and

WHEREAS, all approvals required under the Settlement Agreement have been obtained, including without limitation: (i) the approval of the Bankruptcy Court under Bankruptcy Code section 365 and Bankruptcy Rule 9019 for an order authorizing PC Landing to assume PRC 8152.1 and settle and compromise certain disputes between the Parties; and (ii) approval by the CSLC of the terms of this Amendment;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby amend the terms of PRC 8152.1 as follows:

1. **Rent Amendment:** The "Consideration" paragraph of Section 1, Paragraph 5 of Section 2, and Paragraph 2(b) of Section 4 of PRC 8152.1 are amended, for the lease years and in the manner provided below:

(a) **Back rent for Rental Years Commencing April 2004 and April 2005:**

Since February 23, 2005, PC Landing has paid $12,500 monthly towards its 2004 rent, and has a current balance due as of November 15, 2005, in the amount of $359,150 for rental years commencing April 2004 and April 2005 (the **"Back Rent"**). PC Landing will continue to make monthly rental installments at the rate of $12,500 until January 20, 2006. As of January 20, 2006, no further amount of Back Rent shall be due or payable.

(b) **Rent from *January 20, 2006* thru April 19, 2010:**

Commencing on January 20, 2006 and continuing monthly until March 20, 2006, PC Landing shall pay pro-rated monthly rent in the amount of $20,173 based on the annual rent of $242,075 provided in PRC 8152.1. The rent due on April 20, 2006 (the **"Annual Rent"**) and annually thereafter shall be payable in accordance with the terms of PRC 8152.1, until expiration of the initial term (4/00-4/10) of PRC 8152.1; provided that the Annual Rent due on April 20, 2006 and thereafter during the remainder of the initial term may be paid, at PC Landing's option, in a single annual payment or in quarterly installments, plus interest. If rent is paid quarterly, payments shall include interest that will be calculated based on the State of California Pooled Money Investment Account Earnings Yield Rate, Annual Yield, for the most recent calculated Fiscal Year (the **"Interest Rate"**). The Interest Rate shall be adjusted annually for the succeeding years on the anniversary of the Rent Adjustment Date. CSLC shall advise PC Landing 30 days prior to the anniversary of PRC 8152.1 what the Interest Rate will be for the upcoming rental period.

(c) CSLC waives it rights under Paragraph 5 of Section 2 and Paragraph 2(b) of Section 4 of PRC 8152.1 to review the Annual Rent under the "initial term" (first ten years) of PRC 8152.1, and PC Landing, for itself, its

affiliates, and its successors in interest to PRC 8152.1, agrees not to seek further modification of the rental terms during the remainder of the initial term.

2. **Survey Requirements:** The required frequency for the conduct of post-burial verification surveys as set forth Exhibit "A", Paragraph 21, and the Mitigation Monitoring Plan, Mitigation Number "23" of PRC 8152.1 is amended as follows:

(a) PC Landing conducted a second post-burial verification survey during the months of September and October of 2005 (the **"2005 Survey"**) and submitted survey results to the CSLC. The survey results for the 2005 Survey indicate that the cable burial condition is substantially equal to or better, as that criteria is defined in Exhibit A attached to the Settlement Agreement and to this Amendment and incorporated herein, than was indicated in the July 2003 survey (the **"2003 Survey"**). Accordingly, the next burial inspection survey, other than a survey required under the Lease following an event that affects the cable, will be required eight years from the completion of the 2005 Survey. Except as provided in paragraphs 2 (b) and 2 (c) below, successive periodic burial surveys will be at eight-year intervals.

(b) PCL has recently entered into that certain Stipulation Between California Coastal Commission ("CCC") and Debtors Settling Claims and Other Matters, dated October 28, 2005 (the "Stipulation"), under the terms of which, PC Landing has filed an application to amend its Coastal Development Permit No. E-98-027 (the "CDP)" to extend the interval of time between periodic burial verification surveys. If the application to amend the CDP is approved by the CCC in accordance with the terms of the Stipulation, the interval between periodic burial surveys required under the CDP would be increased to five years. In order to coordinate PC Landing's periodic burial survey requirements under this Lease with the survey requirements of the CDP, the Parties agree that if PC Landing conducts any periodic burial verification survey pursuant to the CDP at a time earlier than such survey is required under this lease ("Early Survey"), and provided such survey is conducted by a third-party approved in writing by the CSLC, utilizing an ROV outfitted with equipment capable of providing video and still images, such survey shall be deemed to be a periodic burial survey conducted under this Lease. In such event, the time within which PC Landing must conduct the next succeeding periodic burial verification survey, as governed under either paragraph 2 (a) or 2 (c) of this Amendment, shall commence to run from the completion of the Early Survey. PC Landing shall furnish the survey results concurrently to the CSLC and the CCC.

(c) Notwithstanding anything contained in paragraphs 2 (a) and 2 (b) above, if any burial inspection survey conducted after the 2005 Survey indicates that cable burial is not substantially equal to or better than the immediately preceding survey, subsequent surveys shall be performed at three-year intervals.

3. **Cable Burial Requirements:** The requirement that the cables be completely buried from the duct ends to the 1,000 fathom depth as provided in the Mitigation Monitoring Plan, Mitigation Number "23" of PRC 8152.1, is hereby amended to provide

that the "as built" condition of the cable, as depicted in the July 2003 Survey, shall be deemed to comply with, and hereafter establish the minimum requirements for, cable burial under PRC 8152.1.

4. **Surety Bond:** The amount of the Surety Bond required under Section 1 of PRC 8152.1 shall be amended to provide as follows: Within 20 days of the later of December 8, 2005, or the Effective Date, PC Landing shall provide a bond (or other form of security reasonably acceptable to the CSLC staff) for 1/5 of the face amount of the bond currently required under PRC 8152.1. Commencing on April 20, 2006, and annually thereafter, PC Landing shall increase the amount of the bond by an additional 1/5, until the bond amount is in full compliance with the provisions of PRC 8152.1. Upon sale of PC-1 to a third party, the amount of the bond shall revert to the face amount of the bond under PRC 8152.1. The face amount of the bond as currently required under PRC 8152.1 is $1,000,000.

5. **Lease Remains In Effect:** PRC 8152.1 shall remain a valid and subsisting lease, in full force and effect pursuant to its terms, as amended herein, and shall be deemed assigned to and shall revest, upon the Effective Date, with reorganized PC Landing.

6. **Execution in Counterparts:** This First Amendment may be signed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. This First Amendment may be signed by the delivery of a signature by facsimile, and any signature delivered by facsimile shall have the same effect as any original signature.

This Settlement Agreement will become binding on the Lessor only when duly executed on behalf of the State Lands Commission of the State of California.

IN WITNESS WHEREOF, the Parties have signed this Settlement Agreement as of the date and year set forth above.

LESSEE:
PC Landing Corp.

By: _____

Title: _____

Date: _____

LESSOR:
State of California
State Lands Commission

By: _____

Title: _____

Date: _____

Execution of this document was authorized by the State Lands Commission on _____.