

Staff Report 63

APPLICANT:

AT&T Corporation

PROPOSED ACTION:

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

AREA, LAND TYPE, AND LOCATION:

1.52 acres, more or less, of State-owned school land within Section 16, Township 16 North, Range 13 East SBM; Section 36, Township 16 North, Range 11 East, SBM; and Section 36, Township 15 North Range 9 East, SBM, between Barstow and Mountain Pass, San Bernardino County.

AUTHORIZED USE:

Use and maintenance of an existing 0.7-inch-diameter fiber optic communication cable encased in one of three bundled 1.5 inch diameter high density polyethylene conduits, subsurface warning tape, and warning marker posts.

TERM:

20 years, beginning December 8, 2021.

CONSIDERATION:

\$1,497 per year, with an annual Consumer Price Index adjustment, and \$4,526 to compensate for the unauthorized occupation of state school land from November 30, 2018.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence; Lessee may satisfy all or part of the insurance requirement through maintenance of a staff-approved self-insurance program as specified in the lease.
- Surety bond or other security in the amount of \$30,000.

- Upon Lessee's delivery of a good-faith estimate prepared by a reputable contractor for the costs of full removal of the improvements, to the sole satisfaction of the Executive Officer or her designee, Lessor and Lessee agree that the Surety Bond required in Section 1 may be modified to reflect the estimated removal costs.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6217.5, 6301, 6501.1, 6503, 6503.5, and 8701; California Code of Regulations, title 2, sections 2000 and 2003.

STATE'S BEST INTERESTS:

On December 13, 1988, the Commission authorized Lease Number PRC 7264, a General Lease – Right-of-Way Use, to American Telephone and Telegraph Company ([Item 28, December 13, 1988](#)). On August 22, 1990, the Commission approved an amendment of the Lease to include a third parcel of State-owned school land crossed by the existing fiber optic communication cable and subsurface warning tape ([Item 29, August 22, 1990](#)). On February 9, 2006, the Commission authorized the assignment of the lease from American Telephone and Telegraph Company to AT&T Corporation ([Item 32, February 9, 2006](#)). On August 22, 2008, the Commission authorized an amendment of the lease for the construction, operation, use, and maintenance of a new 0.7-inch-diameter fiber optic communication cable encased in one of three bundled 1.5 inch diameter high density polyethylene conduits, subsurface warning tape, and warning marker posts; and to decommission and abandon in place the existing fiber optic communication cable ([Item 12, August 22, 2008](#)). The lease expired on November 29, 2018. The Applicant has applied for the continued use of the fiber optic communications cable and subsurface warning tape.

Because the lease expired in 2018, the Applicant has agreed to pay compensation for the unauthorized occupation of school lands from November 30, 2018 through December 7, 2021, the day before the December Commission meeting when the new lease would begin. Staff recommends that the Commission accept compensation from the Applicant in the amount of \$4,526 for the unauthorized occupation of school land prior to the commencement of the proposed lease.

The fiber optic line is used to connect rural communities between Las Vegas, Nevada and Victorville, California in addition to providing infrastructure for future expansion.

The proposed lease is limited to a 20-year term, does not alienate the State's fee simple interest, and does not grant the lessee exclusive rights to the lease premises. The lease requires the Applicant to insure and indemnify the State for any liability incurred as a result of the lessee's activities on the lease premises and to maintain the buried fiber optic communications cable and subsurface warning tape at its sole expense. The lease also requires the payment of annual rent, which generates revenue for the California State Teachers' Retirement System, consistent with the Public Resources Code section 6217.5.

CLIMATE CHANGE:

As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms. The lease area is open lands with moderate to low vegetation fuels, and are vulnerable to the above events, including dust storms and flash flooding from thunderstorms, and to a lesser extent, wildland fires. The leased lands and surrounding land may be vulnerable to these weather events; however, these projected climate change effects are not expected to affect the uses of the leased lands for the existing improvements.

CONCLUSION:

For the reasons stated above, staff believes issuance of this lease is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of school land, it exercises legislatively delegated authority and responsibility as trustee of the State's school lands as authorized by law. If the Commission denies the application, the Applicant has no right to a lease. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Prioritizing Social, Economic, and Environmental Justice" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Acceptance of compensation is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15300.

4. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

EXHIBITS:

- A. Land Descriptions
- B. Site and Location Maps

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

STATE'S BEST INTERESTS:

Find that the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$4,526 for the unauthorized occupation of School lands for the period beginning November 30, 2018, through December 7, 2021.
2. Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning December 8, 2021, for a term of 20 years, for the use and maintenance of an existing 0.7-inch-diameter fiber optic communication cable encased in one of three bundled 1.5 inch diameter high density polyethylene conduits, subsurface warning tape, and warning marker posts., as described in

Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$1,497, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$1,000,000 per occurrence; Applicant may satisfy all or part of the insurance requirement through maintenance of a staff-approved self-insurance program as specified in the lease; Surety bond or other security in the amount of \$30,000.

3. Authorize the Executive Officer or her designee to modify the Surety Bond amount based on an estimate of the full improvement removal costs, as specified in the lease.

EXHIBIT A-1

LEASE 7264

LAND DESCRIPTION

Two 10-foot wide strips of State School Land situate in Section 16, Township 16 North, Range 13 East, San Bernardino Meridian, as shown on the Official U.S. Government Township Plat resurveyed and accepted on May 20, 1942, San Bernardino County, State of California, lying 5 feet on each side of the following centerlines more particularly described as follows:

PARCEL 1 – Fiber Optic Cable

COMMENCING at a 6'x6' concrete monument marking the intersection of the west line of Tract 38, Township 16 North, Range 13 East, San Bernardino Meridian, as shown on the Official Plat thereof and the northerly right of way of State Highway 31 (Interstate 15) as shown on the State of California Department of Transportation Right of Way Map No. 985065 dated July 29, 1960; thence North 0°06'26" West 98.23 feet along said west line more or less to the centerline of an existing 1 ½" bundled conduit encasing one fiber optic communication cable and the POINT OF BEGINNING; thence continuing along the centerline of said conduit the South 88°46'14" West 1379.19 feet; thence South 89°37'50" West 293.38 feet; thence South 72°37'04" West 735.48 feet more or less to POINT OF TERMINATION on the west line of the northeast quarter of said Section 16.

The sidelines of said strip to be lengthened or shortened so as to begin and terminate on the west line of the northeast quarter of said Section 16 and the west of said Tract 38.

PARCEL 1A – Access Road

COMMENCING at a 6'x6' concrete monument marking the intersection of the west line of Tract 38, Township 16 North, Range 13 East, San Bernardino Meridian, as shown on the Official Plate thereof and the northerly right of way of State Highway 31 (Interstate 15) as shown on the State of California Department of Transportation Right of Way Map No. 985065 dated July 29, 1960; thence North 0°06'26" West 13.62 feet more or less to the centerline of an existing dirt road and the POINT OF BEGINNING; thence continuing along the centerline of said road the following twenty four (24) courses:

- 1) North 88°40'28" West 44.16 feet;
- 2) North 87°14'37" West 85.17 feet;
- 3) North 85°03'38" West 72.57 feet;
- 4) North 83°43'35" West 53.52 feet;
- 5) North 85°29'38" West 33.37 feet;
- 6) North 86°37'57" West 66.07 feet;
- 7) South 84°12'07" West 26.04 feet;

- 8) South 81°55'42" West 28.82 feet;
- 9) South 88°25'07" West 40.50 feet;
- 10) South 89°23'32" West 59.20 feet;
- 11) South 89°55'58" West 70.70 feet;
- 12) South 89°57'18" West 87.37 feet;
- 13) South 88°42'29" West 105.89 feet;
- 14) South 89°25'51" West 112.05 feet;
- 15) North 89°45'03" West 203.34 feet;
- 16) South 89°05'59" West 196.52 feet;
- 17) North 89°47'37" West 207.36 feet;
- 18) South 89°50'52" West 126.41 feet;
- 19) South 81°07'32" West 83.33 feet;
- 20) South 74°20'18" West 227.14 feet;
- 21) South 74°56'01" West 138.18 feet;
- 22) South 72°01'27" West 113.74 feet;
- 23) South 74°07'44" West 114.78 feet;
- 24) South 73°21'01" West 107.30 feet more or less to POINT OF TERMINATION on the west line of the northeast quarter of said Section 16.

The sidelines of said strip to be lengthened or shortened so as to begin and terminate on the west line of the northeast quarter of said Section 16 and the west of said Tract 38.

END OF DESCRIPTION

PREPARED 11/9/2021 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



EXHIBIT A-2

LEASE 7264

LAND DESCRIPTION

Two 10-foot wide strips of State School Land situate in Tract No. 37, Township 16 North, Range 11 East, San Bernardino Meridian, as shown on the Official U.S. Government Township Plat resurveyed and accepted on May 20, 1942, San Bernardino County, State of California, Lying 5 feet on each side of the following centerlines more particularly described as follows:

PARCEL 2 – Fiber Optic Cable

BEGINNING at a point on the east line of said Tract No. 37 from which a 3" iron pipe with a 3 ½" brass cap set by the U.S. Government Land Surveyor's Office to mark the southeast corner of said Tract No. 37 bears South 0°55'07" East 836.59 feet, said point of beginning being on the centerline of an existing 1 ½" bundled conduit encasing one fiber optic communication cable; thence along said centerline South 63°45'57" West 1949.09 feet more or less to POINT OF TERMINATION on the south line of the said Tract No. 37.

The sidelines of said strip to be lengthened or shortened so as to begin and terminate on the east line and the south line of said Tract 37.

PARCEL 2A – Access Road

BEGINNING at a point on the east line of said Tract No. 37 from which a 3" iron pipe with a 3 ½" brass cap set by the U.S. Government Land Surveyor's Office to mark the southeast corner of said Tract No. 37 bears South 0°55'07" East 825.53 feet, said point of beginning being on the centerline of an existing dirt road; thence along said centerline South 63°45'57" West 1949.09 feet more or less to POINT OF TERMINATION on the south line of the said Tract No. 37.

The sidelines of said strip to be lengthened or shortened so as to begin and terminate on the east line and the south line of said Tract 37.

END OF DESCRIPTION

PREPARED 11/9/2021 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



EXHIBIT A-3

LEASE 7264

LAND DESCRIPTION

A 30-foot wide strip of State School Land situate in Section 36, Township 15 North, Range 9 East, San Bernardino Meridian, as shown on the Official U.S. Government Township Plat approved on January 21, 1857, San Bernardino County, State of California, also being a portion of that parcel as described as "STRIP 1" of Parcel 401R in that State School Patent SA 5708, patented November 6th 1993 and lying 15 feet on each side of the following centerline more particularly described as follows:

PARCEL 3 – Fiber Optic Cable & Access Road

BEGINNING at a point in Section 31, Township 15 North, Range 10 E, San Bernardino Meridian, said point being a 2" alloy monument stamped "L72D-T1040", which is distant North 54°05'59" East 172.25 feet from a 3" alloy monument in the east line of said Section 36, stamped "L72D-C956", said point "L72D-C956" is distant North 0°11'34" West 1039.33 feet from a 2' diameter rock mound and lath set to mark the southeast corner of said Section 36, thence from said point of beginning along the following twenty-one (21) courses:

- 1) North 84°57'07" West 42.51 feet;
- 2) North 34°36'28" West 162.99 feet;
- 3) South 53°45'01" West 190.57 feet;
- 4) South 48°36'20" West 116.84 feet;
- 5) South 40°59'50" West 245.25 feet;
- 6) South 44°51'33" West 100.92 feet;
- 7) South 56°19'27" West 48.30 feet;
- 8) South 70°38'58" West 45.66 feet;
- 9) South 79°05'29" West 140.60 feet;
- 10) South 59°35'29" West 55.23 feet;
- 11) South 54°17'47" West 534.79 feet;
- 12) South 56°56'36" West 166.85 feet;
- 13) South 52°55'59" West 185.45 feet;
- 14) South 52°32'24" West 202.04 feet;
- 15) South 60°25'12" West 142.52 feet;
- 16) South 65°26'01" West 179.40 feet;
- 17) South 50°09'47" West 79.67 feet;
- 18) South 36°11'50" West 101.12 feet;
- 19) South 52°11'22" West 307.25 feet;
- 20) South 32°21'10" East 163.59 feet;
- 21) South 87°28'20" East 44.65 feet to a 2" alloy monument stamped "L72D-T1042", which is distant South 54°05'59" West 847.31 feet from a 3" alloy monument stamped "L72E-C957", said point "L72E-C957" is distant South 89°30'32" West 1456.56 feet from said southeast corner of Section 36

EXCEPTING THEREFROM any portions lying easterly of the east line of said Section 36 and southerly of the south line of said Section 36.

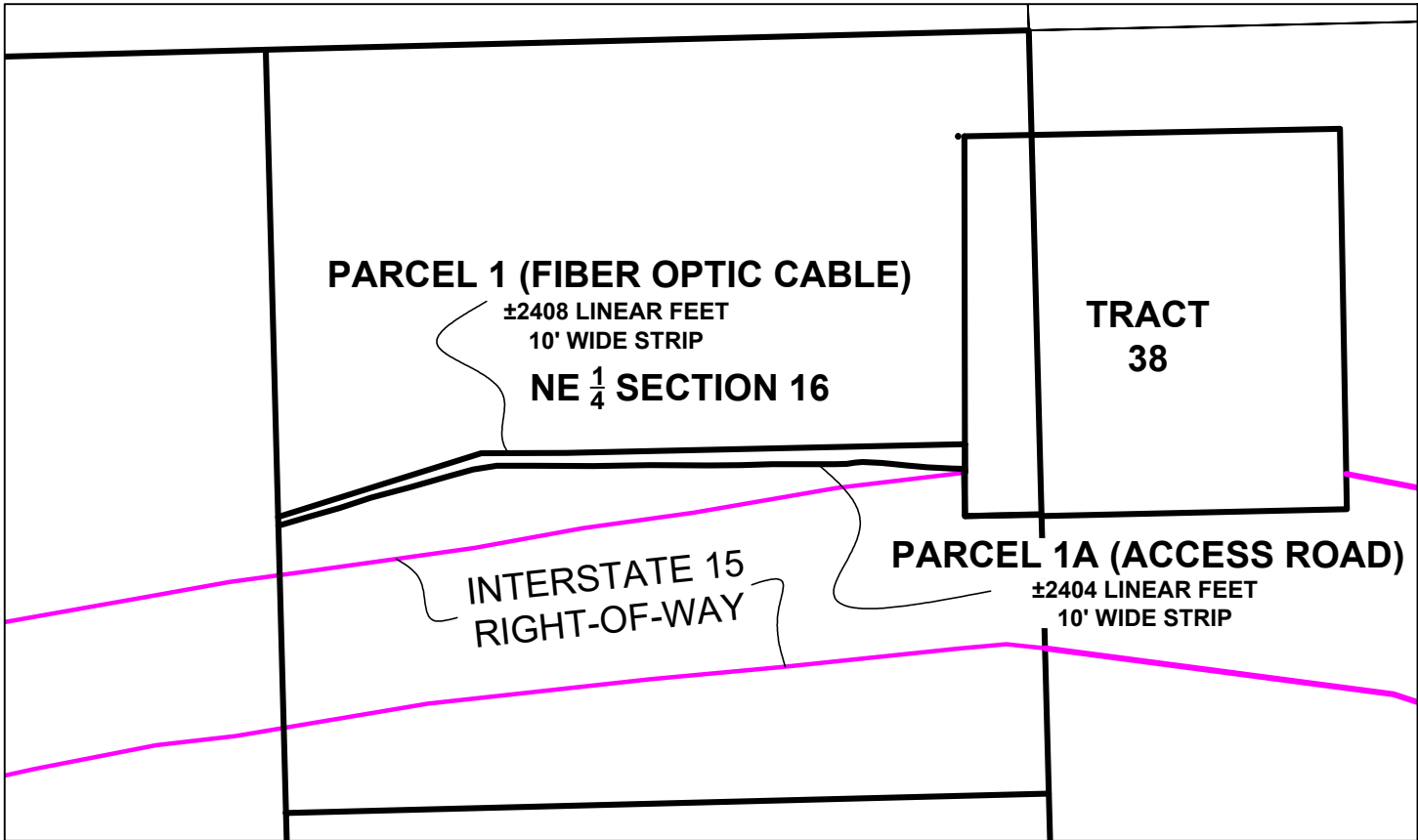
END OF DESCRIPTION

PREPARED 11/9/2021 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



NO SCALE

SITE



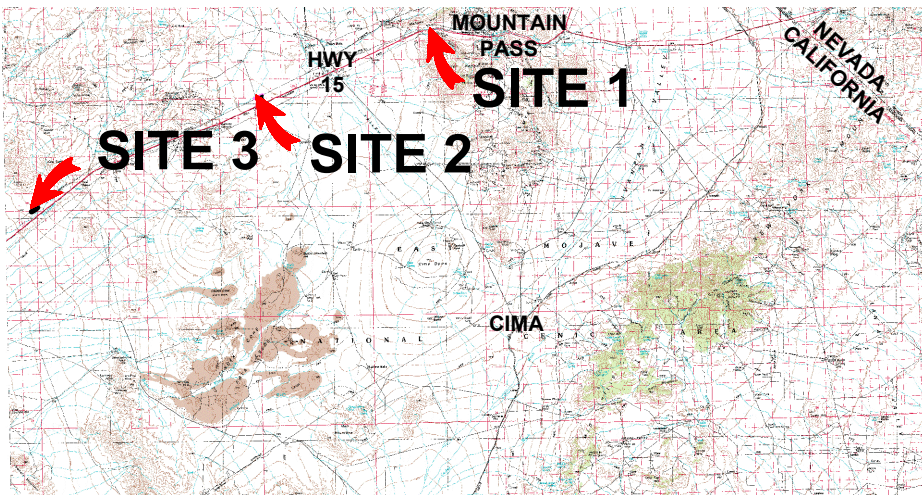
Three Bundled 1½" Conduits Encasing One 0.7" Fiber Optic Communication Cable

SCHOOL LANDS

Portions of - Section 16, T16N, R13E, SBM; Section 36,
T16N, R11E, SBM; Section 36, T15N, R9E, SBM.

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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 B-1

LEASE 7264
AT&T
GENERAL LEASE
RIGHT-OF-WAY USE
SAN BERNARDINO COUNTY



MJF 5/31/2021

NO SCALE

SITE

**TRACT 37
T16N, R11E**

PARCEL 2 (FIBER OPTIC CABLE)

±1949 LINEAR FEET
10' WIDE STRIP

PARCEL 2A (ACCESS ROAD)

±1923 LINEAR FEET
10' WIDE STRIP

**SECTION 6
T15N, R12E**

INTERSTATE 15 RIGHT-OF-WAY

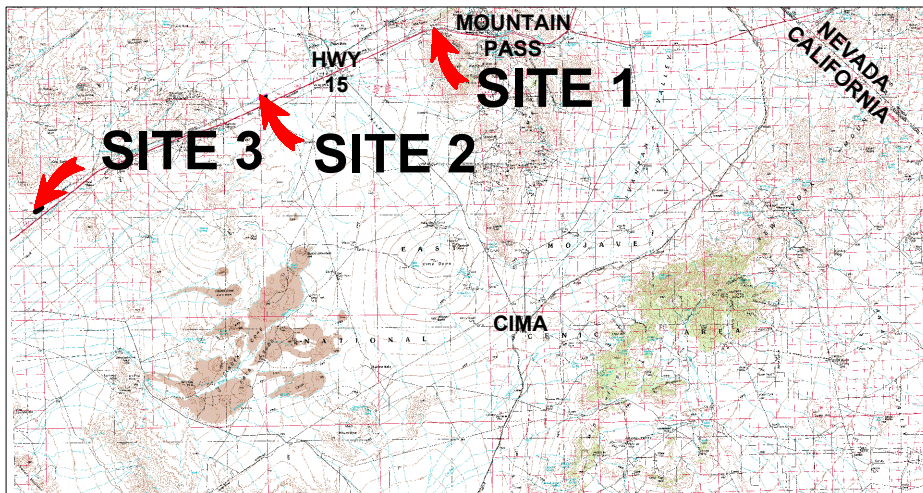
Three Bundled 1½" Conduits Encasing One 0.7" Fiber Optic Communication Cable

SCHOOL LANDS

Portions of - Section 16, T16N, R13E, SBM; Section 36,
T16N, R11E, SBM; Section 36, T15N, R9E, SBM.

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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Exhibit B-2

LEASE 7264
AT&T
GENERAL LEASE
RIGHT-OF-WAY USE
SAN BERNARDINO COUNTY



MJF 5/31/2021

NO SCALE

SITE

**PARCEL 3 (FIBER OPTIC
CABLE & ACCESS ROAD)
"SA5708 PARCEL 401R"**

±2295 LINEAR FEET
30' WIDE STRIP

**SECTION 36
T15N, R9E**

INTERSTATE 15
RIGHT-OF-WAY

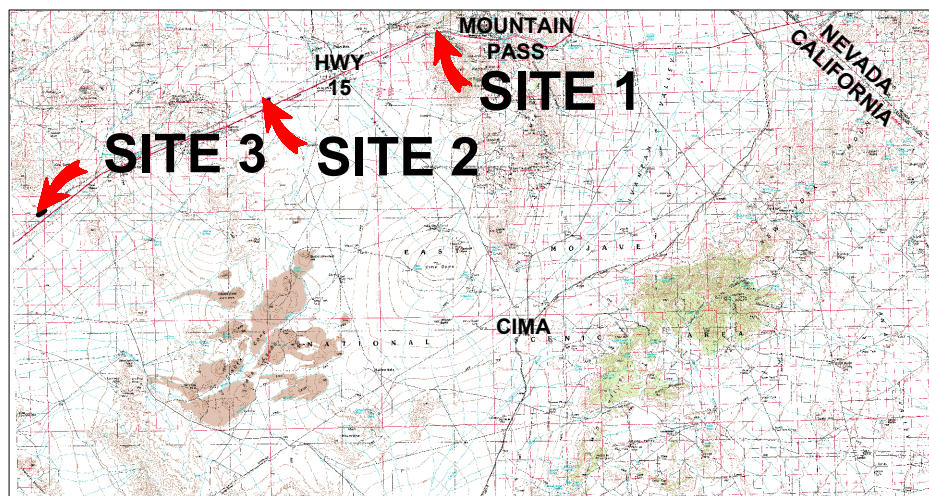
Three Bundled 1½" Conduits Encasing One 0.7" Fiber Optic Communication Cable

SCHOOL LANDS

Portions of - Section 16, T16N, R13E, SBM; Section 36,
T16N, R11E, SBM; Section 36, T15N, R9E, SBM.

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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Exhibit B-3

LEASE 7264
AT&T
GENERAL LEASE
RIGHT-OF-WAY USE
SAN BERNARDINO COUNTY



MJF 5/31/2021