

Staff Report 29

LESSEE/APPLICANT:

Pacific Bell Telephone Company, a California Corporation, dba AT&T California

PROPOSED ACTION:

Amendment of a Lease Agreement

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to Assessor's Parcel Numbers 016-131-005, 017-021-001, 018-090-069, and 019-020-005 located between Rubicon Bay and Baldwin Beach, El Dorado County.

AUTHORIZED USE:

Construct, operate, and maintain telephone and telegraph facilities.

TERM:

Continuous use, beginning November 14, 1955.

CONSIDERATION:

Public use and benefit, pursuant to Section 7901 of the Public Utilities Code.

PROPOSED AMENDMENT:

- Authorization for Lessee to remove the existing telephone and telegraph facilities in their entirety from the lease area, to allow for the termination of the lease, as described in the attached Exhibit A, Land Description, and shown on the attached Exhibit B, Site and Location Map.
- Lessee's removal of the telephone and telegraph facilities includes restoration of the lease premises to its original and natural condition by removal of the facilities, all severed segments, debris, and other equipment used for the removal work. Lessee must also comply with a Tahoe Yellow Cress (TYC) Impact Avoidance Plan.

- Lessee must possess liability insurance in an amount no less than \$3,000,000 that will remain in full force and effect during the remainder of the lease term.
- Lessee will remain exclusively liable for the telephone and telegraph facilities and activity associated with the removal of these facilities.
- Lessee must comply with all permitting requirements and/or conditions imposed by other agencies having jurisdiction over the proposed project, including but not limited to, obtaining authorization from the Tahoe Regional Planning Agency (TRPA) prior to commencing any facilities removal work.
- Lessee must utilize warning signage or buoys to provide the public with notice of the removal and restoration work. Lessee must also notify the California Department of Parks and Recreation's Division of Boating and Waterways of the location, description, and purposes of such signage or buoys upon placement and removal.
- Within 60 days of completion of the removal of authorized improvements, Lessee must attest, in writing, that it has fully removed the telephone and telegraph facilities from State land. Lessee must also keep records for its removal work for the remainder of the lease term and produce them to Lessor upon request.
- Lessor will replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the updated Exhibit A, Land Description, and Exhibit B, Site and Location Map, attached and made a part hereof.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code, sections 6005, 6216, 6301, 6501.1, and 6503; Public Utilities Code, section 7901; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On April 12, 1956, the Commission authorized issuance of a Lease Agreement for use of state-sovereign land to construct, operate, and maintain submarine telecommunications cables (i.e., telephone and telegraph facilities) located between Rubicon Bay and Baldwin Beach, in Lake Tahoe ([Item 47, April 12, 1956](#)). That lease began on November 14, 1955 and provided critical telecommunications services for emergency responders and the general public. During the lease term, the Lessee converted its name from Pacific Telephone and Telegraph Company to Pacific Bell Telephone Company, a California Corporation, dba AT&T California.

On November 4, 2021, the United States District Court, Eastern District of California executed an Amended Consent Decree (case number 2:21-cv-00073-MCE-JDP) which memorializes an agreement between the Lessee/Applicant and the California Sportfishing Protection Alliance, a non-profit corporation, regarding the subject telephone and telegraph facilities on the bed of Lake Tahoe. The Federal Consent Decree facilitated the proposed removal project under the Commission's review, to mitigate concerns about potential leaching of lead toxins from the subject cable into the Lake. The removal of deteriorating telephone and telegraph facilities is a Public Trust benefit, consistent with the findings in the Federal Consent Decree, and is in the State's best interest. On June 23, 2022, the Lessee submitted an application proposing an amendment of lease for removal of the existing steel communications cable within the lease area, followed by restoration of such land to its original and natural condition. The cable resides on the lake bottom (is not buried), runs parallel to the shoreline in approximately 15 feet of water depth, and is partially buried at landfall locations landward of the ordinary low water mark. The lessee proposes to cut the cable at the approximate ordinary high-water mark and abandon the remaining onshore section of cable at landfall locations. Based on the submitted application and Commission records, the telephone and telegraph facilities have existed at this location since approximately 1958. The facilities were installed prior to creation of the TRPA. The Lessee is applying for permits with all applicable regulatory agencies.

On June 19 and July 21, 2022, the Lessee's biologist conducted a TYC survey in the lease area. According to TRPA, TYC is a flowering perennial plant in the mustard family that grows on Lake Tahoe's sandy shorelines and nowhere else in the world. The survey showed evidence of TYC near a few of the cable landfall work areas. Therefore, the Lessee prepared a TYC Impact Avoidance Plan with avoidance measures to ensure no impacts to any TYC plants. The Impact Avoidance Plan will be included as a condition of the lease amendment.

The subject facilities are privately owned and maintained by the Lessee. The removal of this aging cable will improve lake health, public safety, and navigability at this location in Lake Tahoe, thus enhancing Public Trust uses and values. As part of the lease amendment process, the Lessee will fulfill its obligation to remove all improvements which reside on State land and restore the lease premises to its natural condition. The work will be accomplished by use of a barge. The platform will be made up of modular float segments measuring 40 feet x 10 feet x 5 feet and 20 feet x 10 feet x 5 feet. Due to limited lake access for larger marine platforms, modular floats were deemed the best and only viable option for this project. The floats being used are industry standard throughout North America for this type of project.

The barge will be anchored using steel spuds operated by a hydraulic winch due to the need to have a stable marine platform, particularly while cutting work is taking place. Anchoring and stabilizing the barge will occur primarily at planned cable cut locations. Once the cuts are made, the majority of cable removal will occur while live boating, which will not require the use of spuds. The spuds will not be driven, drilled, or embedded into the lakebed by any mechanical means. As with conventional anchoring, small temporary blemishes on the lakebed may arise from spud placement, but the blemishes will disappear over time from wave and current influence. The Lessee estimates it will take seven days to complete this work. All in-water equipment will be inspected for safety and avoiding introduction of foreign contaminants prior to placement in the Lake. Further, the Lessee will remove all debris, tools, and machinery from the lease area after completion of said processes. Within 60 days of project completion, the Lessee will provide Lessor with a letter in which Lessee attests it has fully removed the telephone and telegraph facilities. After the lease area is restored, the lease area will be in an unoccupied state, which pursuant to the terms of the lease, will allow Lessor and Lessee to end the lease.

ARCHAEOLOGICAL AND TRIBAL CULTURAL RESOURCES:

An archaeological survey report was prepared for the project. No archaeological materials or traces were observed during the underwater survey or the terrestrial survey of the proposed cut locations. The communications cable has been in place since approximately 1958 and is not recommended as eligible for listing in the National and California Register of Historic Places. The Lessee is proposing to retain an archaeological field monitor during removal of the cable.

The Lessee also conducted a Sacred Lands File search through the Native American Heritage Commission, and the results were negative. The Lessee did outreach with the listed Tribes with cultural affiliation with the project area. After repeated attempts to contact the Tribes, none of the Tribes responded to participate further with the project.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Lessee could not remove the existing telephone and telegraph

facilities which reside on state-sovereign lands under the Commission's jurisdiction.

2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

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

APPROVALS OBTAINED:

Lahontan Regional Water Quality Control Board

APPROVALS REQUIRED:

Tahoe Regional Planning Agency
U.S. Army Corp of Engineers
California Department of Fish and Wildlife

EXHIBITS:

- A. Land Description
- B. Site and Location Map

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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed activity will not substantially impair the public rights to navigation or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the amendment of Lease No. PRC 1579, effective February 28, 2023; for removal of the existing telephone and telegraph facilities which reside on state-sovereign land, and restoration of such land to its original and natural condition, as described in Exhibit A and shown in Exhibit B (for reference purposes only), attached and by this reference made a part hereof.
2. Authorize the Commission's Executive Officer, or their designee, to execute the amendment of Lease No. PRC 1579, issued to Pacific Bell Telephone Company, a California Corporation, dba AT&T California, for the purpose of authorizing removal of the telephone and telegraph facilities from the lease premises.
3. Authorize the Commission's Executive Officer, or their designee, to terminate the lease pursuant to the lease's terms, including acceptance of a quitclaim deed from the Lessee, after the removal work is complete and staff receives a written letter by Lessee attesting that the removal work is complete.

EXHIBIT A

PRC 1579

LAND DESCRIPTION

Being a strip of submerged land, 200 feet in width, situate in the State Lands Commission jurisdiction of Lake Tahoe, El Dorado County, State of California, and lying 100 feet on either side of the following described centerline:

Beginning at the intersection of the edge of the California State Lands Commission boundary, and a line between California Coordinate System (CCS83), Zone II coordinates North 2111350.05 feet and East 7110736.53 feet & California Coordinate System (CCS83), Zone II coordinates North 2111466.04 feet and East 7110739.91 feet, said line bears N 01°39'17" E, a distance of 117.22'+/-;
And is located +/- 4500 feet northwesterly from Tallac Point and along Baldwin Beach, in Lake Tahoe,

Thence, leaving the northerly terminus of said line, N 60°43'22" E, a distance of 55.17';

Thence, N 05°26'08" W, a distance of 236.76';

Thence, N 16°27'13" W, a distance of 62.92', to California Coordinate System (CCS83), Zone II coordinates of North 2111789.05 feet and East 7110747.79 feet;

Thence, N 52°08'17" W, a distance of 671.49';

Thence, N 47°33'31" W, a distance of 1465.03';

Thence, N 28°58'47" W, a distance of 1302.66';

Thence, N 15°31'31" W, a distance of 952.42';

Thence, N 02°36'23" E, a distance of 794.24';

Thence, N 03°04'51" W, a distance of 610.34';

Thence, N 01°57'41" E, a distance of 313.32';

Thence, N 03°12'51" W, a distance of 488.31';

Thence, N 06°26'01" W, a distance of 471.76';

Thence, N 14°26'07" W, a distance of 115.60';

Thence, N 07°48'26" W, a distance of 559.46';

Thence, N 10°44'32" W, a distance of 619.90', to California Coordinate System (CCS83), Zone II coordinates of North 2119194.68 feet and East 7107963.88 feet;

Thence, N 77°33'21" W, a distance of 471.07';

Thence, N 82°36'26" W, a distance of 109.56';

Thence, N 60°46'22" W, a distance of 1536.34';

Thence, N 29°00'43" W, a distance of 201.75';

Thence, N 65°07'03" W, a distance of 207.03';

Thence, N 76°29'07" W, a distance of 379.79';

Thence, N 66°07'06" W, a distance of 436.35';

Thence, N 56°15'54" W, a distance of 1624.78', to California Coordinate System (CCS83), Zone II coordinates of North 2121491.73 feet and East 7103649.36 feet;

Thence, N 28°36'43" W, a distance of 116.10';

Thence, N 00°50'34" W, a distance of 181.37';

Thence, N 21°07'13" W, a distance of 156.88';

Thence, N 32°56'26" W, a distance of 146.46';

Thence, N 16°08'47" W, a distance of 58.43';

Thence, N 10°02'43" E, a distance of 390.63';

Thence, N 00°35'12" E, a distance of 109.31';

Thence, N 24°28'56" E, a distance of 255.81';

Thence, N 07°57'09" E, a distance of 228.71';

Thence, N 08°05'17" W, a distance of 680.48';

Thence, N 04°11'04" E, a distance of 391.67';

Thence, N 08°20'21" E, a distance of 1054.09';

Thence, N 09°48'08" W, a distance of 1786.78';

Thence, N 22°07'30" W, a distance of 347.01';

Thence, N 31°51'48" W, a distance of 285.36';

Thence, N 30°01'51" E, a distance of 674.23';

Thence, N 23°27'03" E, a distance of 564.06’;

Thence, N 14°14'14" W, a distance of 778.60’;

Thence, N 03°04'30" W, a distance of 1200.90’, to California Coordinate System (CCS83), Zone II coordinates of North 2130540.51 feet and East 7103451.77 feet ;

Thence, N 38°27'15" W, a distance of 846.87’;

Thence, N 17°51'33" W, a distance of 202.24’;

Thence, N 33°49'50" W, a distance of 84.33’;

Thence, N 60°01'10" W, a distance of 83.71’;

Thence, N 75°44'43" W, a distance of 327.52’;

Thence, N 61°48'20" W, a distance of 1792.33’;

Thence, N 56°45'26" W, a distance of 240.85’;

Thence, N 48°45'00" W, a distance of 1657.79’;

Thence, N 49°56'20" W, a distance of 584.35’;

Thence, N 48°36'46" W, a distance of 772.95’;

Thence, N 38°52'43" W, a distance of 281.19’;

Thence, N 37°25'40" W, a distance of 439.34’, to California Coordinate System (CCS83), Zone II coordinates of North 2135115.52 feet and East 7097781.32 feet;

Thence, S 61°55'30" W, a distance of 112.06’;

Thence, S 40°19'44" W, a distance of 73.96’ +/-, to the edge of the California State Lands Commission boundary in Rubicon Bay and south of Loney Gulch +/- 3000 feet, and to California Coordinate System (CCS83), Zone II coordinates of North 2135006.40 feet and East 7097781.32 feet, also being **the End of this Centerline Description.**

The California Zone 2 State Plane Coordinates shown within this legal description were GPS measurements taken in March of 2022 using GRS80.

EXCEPTING THEREFROM any portion(s) lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

End of Description



Dale H Wilhelm

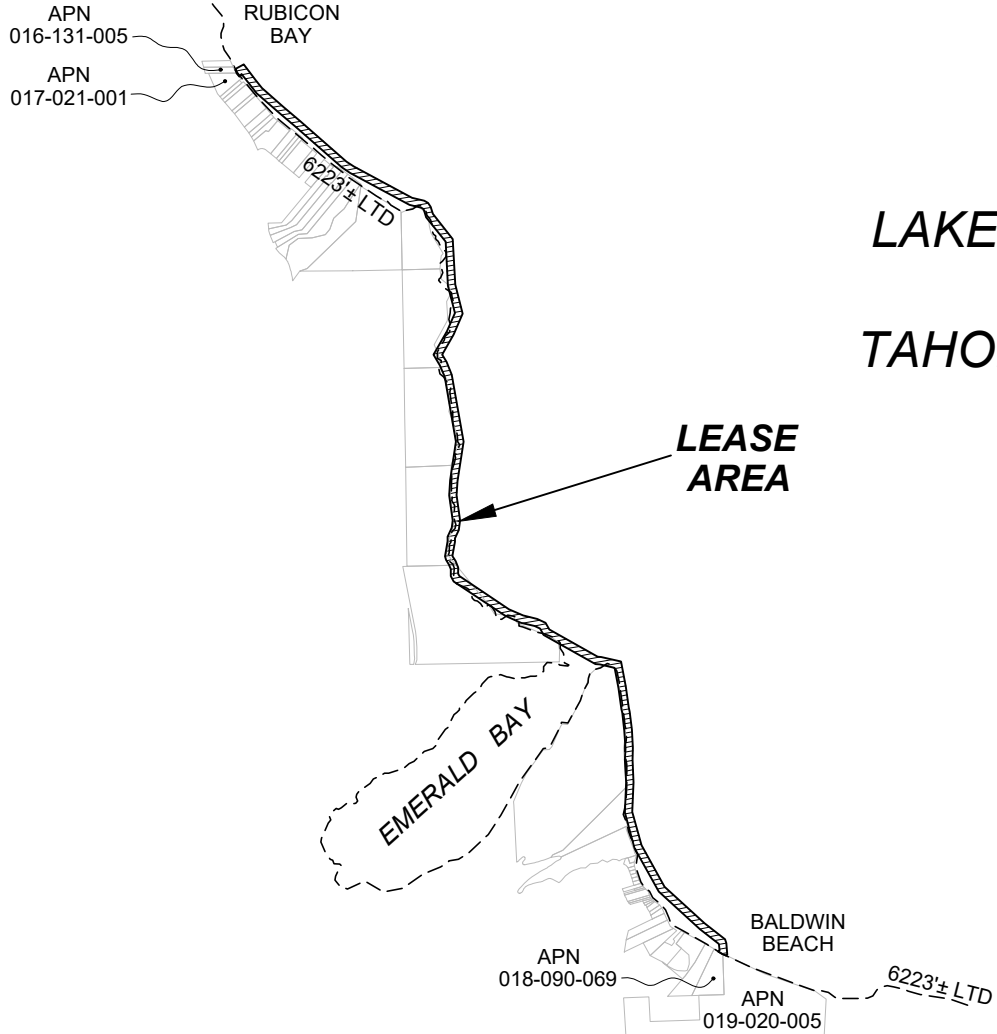
Dale H. Wilhelm, PLS 6423

10/12/2022

Date

NO SCALE

SITE



LAKE TAHOE

**LEASE
AREA**

LAKE TAHOE BETWEEN RUBICON BAY AND BALDWIN BEACH

NO SCALE

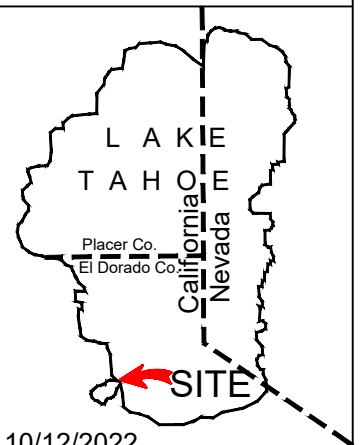
LOCATION



MAP SOURCE: USGS QUAD

EXHIBIT B

PRC 1579
 PACIFIC BELL TELEPHONE
 COMPANY, DBA AT&T
 APNs: MULTIPLE
 GENERAL LEASE
 EL DORADO COUNTY



TS 10/12/2022

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.