

Staff Report 30

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 018-041-004 and 018-060-005, crossing Emerald Bay between Emerald Point and Eagle Point, El Dorado County.

AUTHORIZED USE:

Construct, operate, and maintain telephone and telegraph facilities.

TERM:

Continuous use, beginning January 1, 1970.

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. 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 February 26, 1970, 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 in Emerald Bay, in Lake Tahoe ([Item 04, February 26, 1970](#)). That lease began on January 1, 1970 and provided critical telecom 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 July 1, 2022, the Lessee submitted an application proposing an amendment of lease for removal of the existing facilities 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) 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 outside of the Commission's jurisdiction. Based on the submitted application and Commission records, the telephone and telegraph facilities have existed at this location for approximately 50 years. 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 no evidence of TYC in this proposed work area.

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 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 for approximately 50 years 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 4417, 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 4417, 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 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 4417

LAND DESCRIPTION

A strip of submerged land, 40 feet in width, situate in Emerald Bay, Lake Tahoe, El Dorado County, State of California, and lying 20 feet on each side of the following described centerline:

BEGINNING at a point having California Coordinate System, Zone II coordinates of Y = 478757.36 feet and X = 2544476.30 feet; thence across the opening of Emerald Bay South 60° 58' 00" East 1424.46 feet to a point having California Coordinate System, Zone II coordinates of Y = 478066.04 feet and X = 2545721.76 feet, being TERMINUS of described centerline.

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

END OF DESCRIPTION

The above description is based on that original description prepared on January 1970 as found in PRC 4417 (W 8633) file, Calendar Item 2.

Revised 08/31/2022 by the California State Lands Commission Boundary Unit.



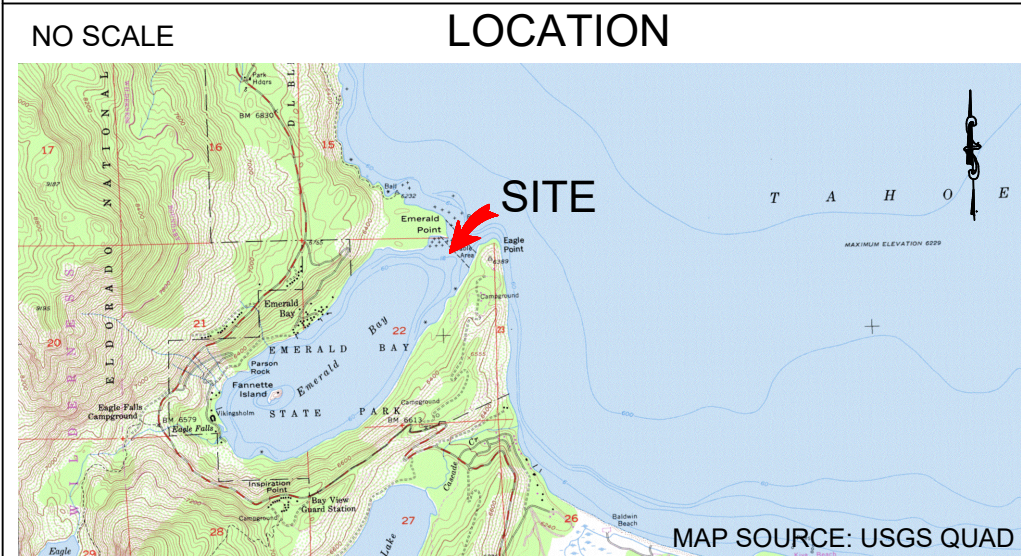
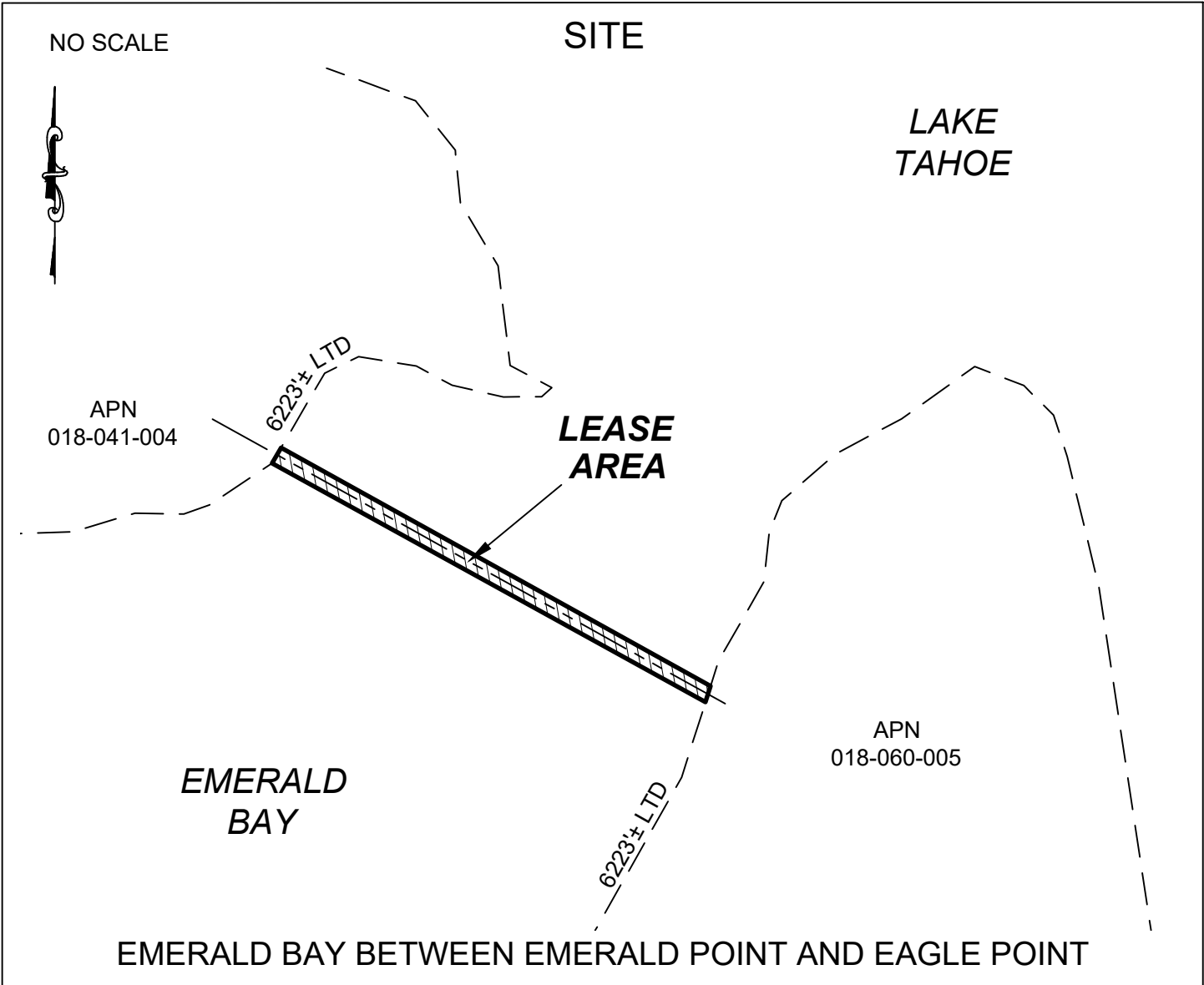
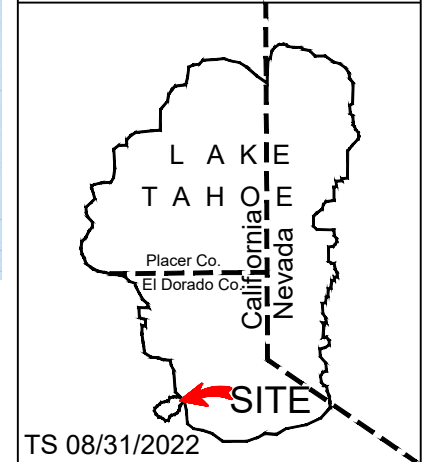


EXHIBIT B

PRC 4417
 PACIFIC BELL TELEPHONE
 COMPANY, DBA AT&T
 APNs 018-041-004 &
 018-060-005
 GENERAL LEASE
 EL DORADO COUNTY



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.